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**MONTANA
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the back of each register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

Page Number

TABLE OF CONTENTS

NOTICE SECTION

AGRICULTURE, Department of, Title 4

4-14-102 Amended Notice of Proposed Amendment - Certification of Noxious Weed Seed Free Forage. No Public Hearing Contemplated. 1827-1832

COMMERCE, Department of, Title 8

8-30-26 (Board of Funeral Service) Amended Notice of Public Hearing on Proposed Amendment, Repeal and Adoption - Applications - Licensure of Out-of-State Applicants - Examination - Fee Schedule - Sanitary Standards - Transfer or Sale of Mortuary License - Crematory Facility Regulation - Processing of Cremated Remains - Board Meetings - Disclosure of Funeral Arrangements - Methods of Quoting Prices - Itemization - Disclosure Statement - Cemetery Regulation - Federal Trade Commission Regulations - Disclosure Statement on Embalming. 1833-1834

ENVIRONMENTAL QUALITY, Department of, Title 17

17-78 (Board of Environmental Review) (Water Quality) Notice of Public Hearing on Proposed Amendment, Adoption and Repeal - Montana Surface Water Quality Standards - Nondegradation Rules - Ground Water Pollution Control System Rules. 1835-1850

LABOR AND INDUSTRY, Department of Title 24

24-9-118 (Human Rights Commission) Notice of Public Hearing on Proposed Adoption, Amendment and Repeal - Organization and Functions of the Montana Human Rights Commission. 1851-1889

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-103 Notice of Public Hearing on Proposed Amendment - Hospital Swing Beds. 1890-1893

37-104 Notice of Public Hearing on Proposed Amendment and Repeal - Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT) - Private Duty Nursing Services. 1894-1908

REVENUE, Department of, Title 42

42-2-632 Notice of Proposed Amendment - Withholding Allowances. No Public Hearing Contemplated. 1909-1911

RULE SECTION

AGRICULTURE, Department of, Title 4

AMD Category 2 Noxious Weeds. 1912

NEW Weed District Supervisor Training. 1913

COMMERCE, Department of, Title 8

NEW (Chemical Dependency Counselor Certification Program) Unprofessional Conduct. 1914

AMD (Board of Landscape Architects) Fee Schedule. 1915

AMD (Board of Radiologic Technologists) Applications - Continuing Education - Permit Application - Types - Unprofessional Conduct. 1916

AMD (Local Government Assistance Division) Single Audit Act. 1917

EDUCATION, Title 10

(Board of Public Education)

AMD	Teacher Certification - Experience Verification.	1918
AMD	Teacher Certification - Renewal Requirements.	1919
AMD	Teacher Certification - Recency of Credit.	1920-1921
AMD	Teacher Certification - Endorsement Information.	1922
AMD	Teacher Certification - Endorsement Information.	1923
AMD	Teacher Certification - Class 1 Professional Teaching Certificate.	1924
AMD	Teacher Certification - Class 3 Administrative Certificate.	1925
AMD	Teacher Certification - Class 6 Specialist Certificate.	1926

ENVIRONMENTAL QUALITY, Department of, Title 17

(Board of Environmental Review) (Public Water Supply) Corrected Notice of Amendment - Updating Public Water Supply and Public Sewage System Rules - Bacteriological Quality Samples.	1927
--	------

PUBLIC SERVICE REGULATION, Department of, Title 38

Corrected Notice of Adoption - Implementing SB 396 (Natural Gas Utility Restructuring and Customer Choice Act, Title 69, Chapter 3, Part 14, MCA) - Standards of Conduct - Anticompetitive and Abusive Practices - Supplier Licensing - Universal System Benefits - Gas Suppliers -- Application for License.	1928
NEW Implementing Senate Bill 390 (Electric Utility Industry Restructuring and Customer Choice Act, Title 69, Chapter 8, (MCA)) - Electricity Supplier Licensing - Reporting.	1929-1942

	<u>Page Number</u>
<u>SPECIAL NOTICE AND TABLE SECTION</u>	
Functions of the Administrative Code Committee.	1943
How to Use ARM and MAR.	1944
Accumulative Table.	1945-1958
Cross Reference Index - January - June 1998	1959-1985

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed) AMENDED NOTICE OF
amendment of ARM 4.5.302,) PROPOSED AMENDMENT
4.5.307, 4.5.308, 4.5.309,)
and 4.5.316 relating to)
certification of Noxious Weed)
Seed Free Forage.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 25, 1998, the Montana Department of Agriculture published a notice of proposed amendment-certification of Noxious Weed Seed Free Forage at page 1546 of the Montana Administrative Register, 1998 issue number 12. The notice of proposed amendment is amended as follows because the reasons did not adequately describe the reasonable necessity for the amendments.

2. The rules as proposed to be amended provide as follows (new material is underlined; material to be deleted is interlined; reasons added by this amended notice are also underlined):

REASON: Amendment of these rules is necessary to allow for the certification of whole grains as noxious weed seed free forage. Also, the Noxious Weed Seed Free Forage Advisory Council recommended that colored twine be allowed to be used as an identification marker for baled forage. Specific rule changes and reasons are further outlined below:

4.5.302 DEFINITION OF TERMS These definitions apply to all rules adopted under the Montana Noxious Weed Seed Free Forage Act, Title 80, chapter 7, part 9, MCA.

(1) through (6) remain the same.

(7) "Restricted area" means an area designated by an agency, group or person that requires the use of noxious weed seed free forage.

AUTH: 80-7-909, MCA

IMP: 80-7-903, MCA

~~REASON: A definition of restricted area was needed for clarification. Several states and federal agencies have identified "restricted" areas in which they will only permit the use of noxious weed seed free forage for livestock feed. The intent is to define the area so that forage users will know where certified hay will be required, and to prevent noxious weed seeds from being introduced into wilderness and/or primitive types of areas.~~

4.5.307 FORAGE INSPECTION PROCEDURES (1) The following procedures and processes will be required for field unit NWSFF certification:

(1) (a) through (1) (b) remain the same.

(c) If the field unit is certified for straw the seed that is harvested from that field unit may be considered for certification.

(2) through (8) remain the same.

(9) Combining equipment is to be cleaned of any noxious weed seed prior to harvesting the certified whole grain field(s).

~~(9)~~ (10) Fields that appear weedy or show poor crop practices, even though noxious weeds are not present, should not be certified under the certification standards. The local agent will document the problems and has the discretion to make this judgement. A producer can challenge this decision and petition the department to assign another agent to reinspect the field.

AUTH: 80-7-909, MCA

IMP: 80-7-905 and 80-7-906, MCA

REASON: 4.5.307(1) (c) Clarifies that the seed from a field certified for straw could also be considered for certification. Small grain fields may be inspected for noxious weeds so the straw can be certified as noxious weed seed free mulch. This statement clarifies that the seed in the field can be certified as noxious weed seed free if the straw has been so certified.

4.5.307(9) Requires cleaning of equipment prior to harvesting crop. This rule is needed to prevent the use of harvesting equipment that may have been used in fields containing noxious weeds prior to the time it is to be used to harvest certified noxious weed seed free fields.

4.5.308 FORAGE IDENTIFICATION AND TRANSPORTATION

(1) Identification of forage field grown or harvested includes the following:

(a) The producer identification number.

(b) Bales sold in one ton lots or less must be identified individually using a department approved identification marker.

(i) If each bale in lots of greater than one ton does not have a numbered tag, a transportation certificate is required.

(ii) If each bale in a load is individually marked with a numbered tag a transportation certificate is not required.

(c) Forage sold in bulk, including whole grain, must be visibly identified with a department approved identification marker accompanied by a completed transportation certificate.

(i) If colored baler twine is used for marking, only one strand of the colored twine is required per bale. However, a completed transportation certificate is required and must specify whether the forage was inspected for Montana noxious weeds or regional noxious weeds.

(ii) Loads of bulk forage not marked with colored twine

may be identified with identification markers (tags) placed on the four corners of the load.

(d) All whole grain sold in bags must be marked with a department approved identification marker.

(e) The producer shall make all reasonable efforts to ensure the whole grain is not contaminated with noxious weed seeds from the time of harvest and storage including delivery to the buyer.

(2) Forage identification markers and transportation certificates approved by the department will be sold and distributed, respectively, by the department or its agents. The fee assessed for identification markers shall be commensurate with the actual costs of the markers.

(3) A noxious weed seed free forage product transportation certificate ~~issued and numbered by the department or a photocopy must be in the possession of the vehicle driver or the transporter of such forage products in a restricted area or while traveling through such an area if each bale is not individually marked and must contain the following:~~

(a) A statement that this forage meets the criteria set by the Montana Noxious Weed Seed Free Forage Act;

(b) name and address of the producer;

(c) producer identification number;

(d) name and address of buyer;

(e) type of forage;

(f) identification marker (tags, colored baler twine, etc.);

(g) number of bales by type or tonnage;

(h) date of sale;

(i) seller's signature;

(j) vehicle operator or driver's signature; this must be signed upon receipt of forage.

(k) a statement that the forage meets Montana or regional certification standards.

~~(4)(*) Bales or bulk~~ All forage sold by a producer to a second party (such as a retail outlet) for resale must be accompanied by the original transportation certificate. The second party (or retail outlet) will photocopy the original transportation certificate and provide this photocopy plus a receipt to third party buyers of the ~~bales or~~ forage. Third party buyers must have the photocopy of the transportation certificate and the receipt (to show where the forage was purchased) in their possession when they are transporting or storing forage in a restricted area.

~~(5)(44)~~ Identification of forage that has been pelleted, cubed or other related products shall include the following:

(a) Certified pellets, cubes or other forage byproducts must have a label attached (either sewn, printed or a separate label) showing proof of certification of the contents with the following statement: "This product has been certified by the Montana Department of Agriculture as Montana Noxious Weed Seed Free Forage."

(b) For out-of-state pelleted products the label on the product must have the following statement: "This product has

been certified by (state, agency, province) to be in compliance with Montana's standards for Noxious Weed Seed Free Forage." Montana may enter into reciprocal agreements with other states, agencies, and/or provinces that will identify the certification procedures to be used.

(c) Identification labels for pellets, cubes or other forage products must be submitted to the department for approval.

(6)(5) It is the responsibility of each producer to make sure that all certified NWSFF sold under the program is properly labeled and identified with transportation certificates before it leaves the premises.

AUTH: 80-7-909, MCA

IMP: 80-7-905, 80-7-906 and 80-7-909

REASON: 4.5.308(b)(i)(ii)(c) Specifies conditions when a transportation certificate is or is not required. This rule is needed to indicate that if each bale is marked with a numbered tag, a transportation certificate is not needed because it is duplicative. It will reduce unnecessary paperwork.

4.5.308(1)(c) This rule is needed so that bulk loads of whole grain are identified as noxious weed seed free with a transportation certificate. Obviously, whole grain could not be identified by markers unless it was in bags.

4.5.308(1)(c)(i) Specifies that colored twine may be used for certification and that a transportation certificate is required. This rule establishes that each bale of forage only needs one strand of the colored twine to identify it as noxious weed seed free. The combination of colors in the twine is unique to the program and enforcement personnel from the various agencies are aware of this. A transportation certificate is needed because this is the only document that will indicate whether the forage was inspected for Montana's 15 state declared noxious weeds or the Region's 54 declared noxious weeds.

4.5.308(1)(c)(ii) Allows tags on loads of bulk forage not marked with colored twine. This rule is needed so that bales of forage that have been certified as noxious weed seed free, but are not marked with the colored twine or numbered tags can be identified in loads by enforcement personnel.

4.5.308(1)(d) Specifies that whole grain in bags must be properly marked. This is needed so that buyers will know the whole grain sold in bags has been certified by the department as noxious weed seed free and can be so identified by the identification marker.

4.5.308(1)(e) Specifies that the producers make reasonable effort to prevent contamination of whole grain with noxious weed seeds. This rule is intended to stimulate the producer to ensure that the equipment used for moving the certified seed

into storage and eventually to a buyer is cleaned so that he does not introduce any noxious weed seeds into the certified lot. Also, storage facilities should be cleaned prior to storing the certified seed so that noxious weed seeds are not introduced at this point.

4.5.308(3) This rule is to ensure that the transportation certificate will be issued and have a unique numbering system from the department.

4.5.308(3) (k) Specifies that the transportation certificates are issued and numbered by the department and that the forage meets Montana or regional certification standards. This rule is needed to require that a statement is on the transportation certificate so that the forage will be identified that it has been inspected for Montana noxious weeds or regional noxious weeds.

4.5.308(4) Clarifies that all forage when offered for resale must have a transportation certificate.

4.5.309 CERTIFICATION OF AGENTS (1) Each person desiring to be an agent must be trained and certified according to department standards. This certification will be for a three year period.

(2) through (2)(g) remain the same.

(3) The department will require agents to recertify after the third year of initial certification. Agents who become initially certified during the first or second year of the three year cycle, will recertify according to the established schedule.

(a) The training schedule will be:

Initial	Recertification	Recertification
1996	1999	2002
1997	2000	2003
1998	2001	2004
1999	2002	2005
2000	2003	2006

(4) and (5) remain the same.

AUTH: 80-7-909, MCA

IMP: 80-7-905, MCA

REASON: Specifies the certification and recertification training schedule for the agents. This rule is needed to identify the years in which agents will recertify after they have been initially certified. This was a request made by a number of agents and the Noxious Weed Seed Free Advisory Council.

4.5.316 CIVIL PENALTIES (1) Whenever the department has reason to believe that a violation of Title 80, chapter 7, part 9, MCA, or any adopted rule thereunder has occurred, it

may initiate a civil penalty action pursuant to the Montana Administrative Procedure Act.

(2) through (4)(e) remains the same.

(f) to improperly pay any application or certification fee or refuse to pay for any inspection fees or department approved identification markers;	\$250	\$500	\$1,000
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(4)(g) through (k) remain the same.

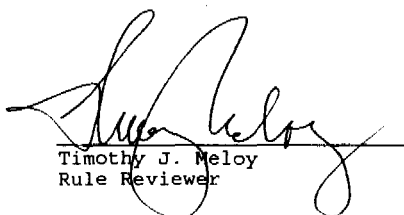
REASON: ~~Establishes that it is a violation for failure to pay for department approved identification markers. This rule is needed to establish that if identification markers are not paid for, a civil penalty can be assessed by the department.~~

AUTH: 80-7-909, MCA

IMP: 80-7-922, MCA

DEPARTMENT OF AGRICULTURE


Ralph Peck, Director


Timothy J. Meloy
Rule Reviewer

Certified to the Secretary of State on July 6, 1998.

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	AMENDED NOTICE OF PUBLIC
amendment of rules pertaining	)	HEARING ON PROPOSED AMENDMENT,
to applications, licensure of	)	REPEAL AND ADOPTION OF
out-of-state applicants, exam-	)	RULES PERTAINING TO THE
ination, fee schedule, sanitary)	)	FUNERAL SERVICE INDUSTRY
standards, transfer or sale of)		
mortuary license, crematory)		
facility regulation, processing)		
of cremated remains; repeal of)		
rules pertaining to board)		
meetings, disclosure of funeral)		
arrangements, methods of)		
quoting prices, itemization,)		
disclosure statement; and)		
adoption of new rules pertain-)	
ing to cemetery regulation,)		
federal trade commission regu-)	
lations and disclosure)		
statement on embalming)		

TO: All Interested Persons:

1. On May 14, 1998, the Board of Funeral Service published a notice of public hearing on the proposed amendment, repeal and adoption of rules pertaining to the funeral service industry at page 1228, 1998 Montana Administrative Register, issue number 9. The hearing was held on June 18, 1998, at 10:00 a.m., in Helena, Montana.

2. The Board inadvertently omitted mailing the proposed notice to a number of the persons on its interested persons mailing list. For this reason, the Board will hold another public hearing on these proposed amendments, repeals and adoptions on August 5, 1998, at 9:00 a.m., in the conference room of the Division of Professional and Occupational Licensing, Lower Level, Arcade Building, 111 N. Jackson, Helena, Montana. The additional hearing will allow all persons interested in the proposed amendments, repeals and adoptions the opportunity to comment.

3. The amendments, repeals and adoptions will remain the same as originally proposed in issue number 9.

4. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., July 29, 1998, to advise us of the nature of the accommodation that you need. Please contact Cheryl Smith, Board of Funeral Service, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-5433; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons


with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Cheryl Smith.

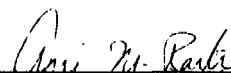
5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Funeral Service, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., August 13, 1998.

6. Melody K. Brown, attorney, has been designated to preside over and conduct this hearing.

7. Persons who wish to be informed of all Board of Funeral Service administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at the hearing or in writing to the Board of Funeral Service, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-5433.

BOARD OF FUNERAL SERVICE
DAVID FULKERSON, CHAIRMAN


ANNIE M. BARTOS
RULE REVIEWER

BY: 
ANNIE M. BARTOS, CHIEF COUNSEL,
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 6, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of rules 17.30.602,	)	ON PROPOSED AMENDMENT,
17.30.622 through 17.30.629,	)	ADOPTION AND REPEAL
17.30.701, 17.30.1001; the)	
adoption of new rules I)	
through III; and the repeal)	
of rules 17.30.1002 and)	
17.30.1003 pertaining to the)	
Montana surface water quality)	
standards, the nondegradation)	
rules, and the ground water)	
pollution control system)	
rules)	
	)	(Water Quality)

TO: All Interested Persons

1. On August 27, 1998, at 10:00 a.m., or as soon thereafter as the matter may be heard, the board will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the amendment, adoption and repeal of the above-captioned rules.

The board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the board no later than 5 p.m., August 10, 1998, to advise us of the nature of the accommodation you need. Please contact the board at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

2. The rules as proposed to be amended appear as follows. Matter to be added is underlined. Matter to be deleted is interlined.

17.30.602 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions given in 75-5-103, MCA:

(1) through (29) Remain the same.

(30) The board hereby adopts and incorporates by reference department Circular QWB-7, entitled "Montana Numeric Water Quality Standards" (~~December, 1995~~ August 1998 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, and other harmful parameters in water. Copies of Circular QWB-7 may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901.

(31) Remains the same.

AUTH: 75-5-201 and 75-5-301, MCA; IMP: 75-5-301, MCA

17.30.622 A-1 CLASSIFICATION STANDARDS (1) through

(3) Remain the same.

(4) The board hereby adopts and incorporates by reference

the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December, 1995~~ August 1998 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, and other harmful parameters in water; and

(4) (b) and (c) Remain the same.

AUTH: 75-5-201 and 75-5-301, MCA; IMP: 75-5-301, MCA

17.30.623 B-1 CLASSIFICATION STANDARDS (1) and (2) Remain the same.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December, 1995~~ August 1998 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, and harmful parameters in water; and

(3) (b) and (c) Remain the same.

AUTH: 75-5-201 and 75-5-301, MCA; IMP: 75-5-301, MCA

17.30.624 B-2 CLASSIFICATION STANDARDS (1) and (2) Remain the same.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December, 1995~~ August 1998 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, and harmful parameters in water; and

(3) (b) and (c) Remain the same.

AUTH: 75-5-201 and 75-5-301, MCA; IMP: 75-5-301, MCA

17.30.625 B-3 CLASSIFICATION STANDARDS (1) and (2) Remain the same.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December, 1995~~ August 1998 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, and harmful parameters in water; and

(3) (b) and (c) Remain the same.

AUTH: 75-5-201 and 75-5-301, MCA; IMP: 75-5-301, MCA

17.30.626 C-1 CLASSIFICATION STANDARDS (1) and (2) Remain the same.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December, 1995~~ August 1998 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, and harmful parameters in water; and

(3) (b) and (c) Remain the same.

AUTH: 75-5-201 and 75-5-301, MCA; IMP: 75-5-301, MCA

17.30.627 C-2 CLASSIFICATION STANDARDS (1) and (2) Remain

the same.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December, 1995~~ August 1998 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, and harmful parameters in water; and

(3) (b) and (c) Remain the same.

AUTH: 75-5-201 and 75-5-301, MCA; IMP: 75-5-301, MCA

17.30.628 I CLASSIFICATION STANDARDS (1) and (2) Remain the same.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December, 1995~~ August 1998 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, and harmful parameters in water; and

(3) (b) and (c) Remain the same.

AUTH: 75-5-201 and 75-5-301, MCA; IMP: 75-5-301, MCA

17.30.629 C-3 CLASSIFICATION STANDARDS (1) and (2) Remain the same.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December, 1995~~ August 1998 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, and harmful parameters in water; and

(3) (b) and (c) Remain the same.

AUTH: 75-5-201 and 75-5-301, MCA; IMP: 75-5-301, MCA

17.30.702 DEFINITIONS Unless the context clearly states otherwise, the following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter (Note: 75-5-103, MCA, includes definitions for "degradation", "existing uses", "high quality waters", and "parameter."):

(1) through (23) Remain the same.

(24) (a) The board hereby adopts and incorporates by reference:

(i) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December, 1995~~ August 1998 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, and harmful parameters in water; and

(24) (a) (ii) through (b) Remain the same.

AUTH: 75-5-301 and 75-5-303, MCA; IMP: 75-5-303, MCA

17.30.1001 DEFINITIONS For the purpose of this subchapter, the following definitions, in addition to those in 75-5-103, MCA, will apply:

(1) "Beneficial use" means any legal use of ground water authorized under the laws of the state of Montana, a use of groundwater designated under the appropriate classification in

ARM 17.30.1003.

(2) through (9) Remain the same.

(10) "MPDES permit" means any permit ~~or equivalent document or requirement~~ issued by the department pursuant to ARM Title 17, chapter 30, subchapter ~~12~~ 13 to regulate the discharge of pollutants from point sources into state surface waters.

(11) through (14) Remain the same.

(15) "WQB-7" means department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (August 1998 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, and harmful parameters in water.

AUTH: 75-5-201 and 75-5-401, MCA; IMP: 75-5-301 and 75-5-401, MCA

3. The rules as proposed to be adopted appear as follows:

RULE I APPLICABILITY OF GROUNDWATER STANDARDS AND BASIS FOR CLASSIFICATIONS (1) The standards in Rule II establish the maximum allowable changes in groundwater quality and are the basis for limiting discharges to groundwater.

(2) The groundwater standards may be exceeded within a mixing zone established pursuant to ARM 17.30.501 through 17.30.518.

(3) It is not necessary to treat discharges to a purer condition than the natural condition of the receiving water, within the meaning of 75-5-306, MCA.

(4) The classifications of groundwater are based on natural specific conductance as specified in Rule II.

AUTH: 75-5-301, 80-15-105 and 80-15-201, MCA; IMP: 75-5-301 and 80-15-201, MCA

RULE II CLASSIFICATIONS, BENEFICIAL USES AND SPECIFIC STANDARDS FOR GROUNDWATERS

(1)(a) Class I groundwaters are those groundwaters with a natural specific conductance less than or equal to 1,000 microSiemens/cm at 25°C.

(b) The quality of Class I groundwater must be maintained so that these waters are suitable for the following beneficial uses with little or no treatment:

- (i) public and private water supplies;
- (ii) culinary and food processing purposes;
- (iii) irrigation;
- (iv) drinking water for livestock and wildlife; and
- (v) commercial and industrial purposes.

(c) Except as provided in Rule I(2) and Rule II(5), a person may not cause a violation of the following specific water quality standards in Class I groundwater:

(i) the human health standards for groundwater listed in WQB-7;

(ii) for concentrations of parameters for which human health standards are not listed in WQB-7, no increase of a parameter to a level that renders the waters harmful, detrimental or injurious to the beneficial uses listed for Class

I water. The department may use any pertinent credible information to determine these levels; and

(iii) no increase of a parameter that causes a violation of the nondegradation provisions of 75-5-303, MCA.

(2) (a) Class II groundwaters are those groundwaters with a natural specific conductance that is greater than 1,000 and less than or equal to 2,500 microSiemens/cm at 25°C.

(b) The quality of Class II groundwater must be maintained so that these waters are at least marginally suitable for the following beneficial uses:

- (i) public and private water supplies;
- (ii) culinary and food processing purposes;
- (iii) irrigation of some agricultural crops;
- (iv) drinking water for livestock and wildlife; and
- (v) most commercial and industrial purposes.

(c) Except as provided in Rule I(2) and Rule II(5), a person may not cause a violation of the following specific water quality standards for Class II groundwater:

(i) the human health standards for groundwater listed in WQB-7;

(ii) for concentrations of parameters for which human health standards are not listed in WQB-7, no increase of a parameter to a level that renders the waters harmful, detrimental or injurious to the beneficial uses listed for Class II water. The department may use any pertinent credible information to determine these levels; and

(iii) no increase of a parameter that causes a violation of the nondegradation provisions of 75-5-303, MCA.

(3) (a) Class III groundwaters are those groundwaters with a natural specific conductance that is greater than 2,500 and less than or equal to 15,000 microSiemens/cm at 25°C.

(b) The quality of Class III groundwater must be maintained so that these waters are at least marginally suitable for the following beneficial uses:

- (i) irrigation of some salt tolerant crops;
- (ii) some commercial and industrial purposes;
- (iii) drinking water for some livestock and wildlife; and
- (iv) drinking, culinary and food processing purposes where the specific conductance is less than 5,000 microSiemens/cm at 25°C.

(c) Except as provided in Rule I(2) and Rule II(5), a person may not cause a violation of the following specific water quality standards for Class III groundwater:

(i) the human health standards listed in WQB-7, except that the nitrate and nitrate plus nitrite nitrogen standards listed in WQB-7 do not apply to groundwaters with a specific conductance equal to or greater than 5,000 microSiemens/cm at 25°C; and

(ii) for concentrations of parameters for which human health standards for groundwater are not listed in WQB-7, no increase of a parameter to a level that renders the waters harmful, detrimental or injurious to the beneficial uses listed for Class III water. The department may use any pertinent

credible information to determine these levels.

(d) The nondegradation provisions of 75-5-303, MCA, do not apply to Class III groundwater.

(4) (a) Class IV groundwaters are those groundwaters with a natural specific conductance greater than 15,000 microSiemens/cm at 25°C.

(b) The quality of Class IV groundwaters must be maintained so that they are suitable for some industrial and commercial uses.

(c) Except as provided in Rule I(2) and Rule II(5), a person may not cause a violation of the following specific water quality standards for Class IV groundwater:

(i) the human health standards for parameters categorized as carcinogens in WQB-7;

(ii) for concentrations of parameters in WQB-7 which are not listed as carcinogens, no increase of a parameter to a level that would adversely affect existing beneficial uses. The nitrate and nitrate plus nitrite nitrogen standards listed in WQB-7 do not apply to Class IV waters;

(iii) for concentrations of parameters for which human health standards are not listed in WQB-7, no increase of a parameter to a level that would adversely affect existing beneficial uses. The department may use any pertinent credible information to determine these levels.

(d) The nondegradation provisions of 75-5-303, MCA, do not apply to Class IV groundwater.

(5) Where it can be demonstrated to the satisfaction of the department that the hydraulic conductivity is less than 0.1 feet per day in an affected or potentially affected groundwater zone, the nitrate and nitrate plus nitrite nitrogen standards in WQB-7 and the nondegradation provision of 75-5-303, MCA, for nitrate and nitrate plus nitrite nitrogen, do not apply to Class I, Class II or Class III waters, provided that all existing and anticipated uses of the groundwaters are protected.

(6) The groundwater quality standards for metal parameters are based on the dissolved portion (after filtration through a 0.45 micron filter) of the contaminant in the groundwater. The groundwater quality standards for other parameters in department Circular WQB-7 are based upon unfiltered samples. For inorganic parameters, compliance with standards based on filtered samples must be assumed if analyses using the total recoverable method demonstrates compliance with the numerical standards.

AUTH: 75-5-301, 80-15-105 and 80-15-201, MCA; IMP: 75-5-301 and 80-15-201, MCA

RULE III SAMPLE COLLECTION, PRESERVATION, AND ANALYSIS METHODS

(1) Methods of sample collection, preservation and sample analysis used to determine compliance with the standards in this subchapter must be in accordance with 40 CFR 136 "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (July 1997), or the following:

(a) EPA-SW-846, Third Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August

1993), IIB (January 1995), and III (December 1996), "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods";

(b) EPA-600/R-95/131 (August 1995), "Methods for the Determination of Organic Compounds in Drinking Water", Supplement III;

(c) EPA-600/R-93/100 (August 1993), "Methods for the Determination of Inorganic Substances in Environmental Samples";

(d) EPA-600/R-94/111 (May 1994), "Methods for the Determination of Metals in Environmental Samples", Supplement I; or;

(e) methods specifically approved by the department in a permit, license, authorization, or approval provided for by statute or rule.

(2) Analyses of parameters to determine compliance with groundwater standards must comply with the required reporting values given in WQB-7.

(3) The board hereby adopts and incorporates by reference the following publications:

(a) Department Circular WQB-7, entitled "Montana Numeric Water Quality Standards", August 1998;

(b) EPA-SW-846, [Third Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996)], "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods";

(c) EPA-600/R-95/131 (August 1995), "Methods for the Determination of Organic Compounds in Drinking Water", Supplement III;

(d) EPA-600/R-93/100 (August 1993), "Methods for the Determination of Inorganic Substances in Environmental Samples"; and

(e) EPA-600/R-94/111 (May 1994), "Methods for the Determination of Metals in Environmental Samples", Supplement I.

(4) Copies of the publications in (a) through (e), above are available at the Department of Environmental Quality, 1520 East Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901. AUTH: 75-5-301, MCA; IMP: 75-5-301, MCA

4. Rule 17.30.1002, Classification of Groundwater, as proposed to be repealed, is on page 17-2826 of the Administrative Rules of Montana.

AUTH: 75-5-301; IMP, 75-5-301, MCA

Rule 17.30.1003, Groundwater Quality Standards, as proposed to be repealed, is on pages 17-2827 and 17-2828 of the Administrative Rules of Montana.

AUTH: 75-5-301; IMP, 75-5-301, MCA

5. In addition, the Board is proposing to amend WQB-7 to do one of the following: (1) change the numeric standard for manganese listed in WQB-7 to 1.0 mg/L; (2) remove the numeric

standards for iron and manganese from WQB-7; or (3) leave the current numeric standards for iron and manganese unchanged.

6. The Board is also proposing to amend WQB-7 by listing the standard for cyanide in WQB-7 in terms of some analytical method other than its current expression as total cyanide. The Board is proposing to do one of the following: (1) expressing the cyanide standard in terms of an analytical method such as free cyanide, amenable to chlorination, or weak acid dissociable; (2) maintaining the current expression of cyanide as total cyanide.

7. The Board is also proposing to amend WQB-7 by adopting a numeric standard for Methyl Tertiary-Butyl Ether (MTBE). The Board is proposing to do one of the following: (1) adopt a numeric standard for MTBE in the range of 20 to 40 mg/L based upon EPA's advisory of avoiding taste and odor effects; or (2) taking no action to adopt a numeric standard for MTBE during this rulemaking.

8. The Board is also proposing to amend WQB-7 by adopting a numeric standard for fecal coliform bacteria in groundwater. The Board is proposing to do one of the following: (1) adopt a standard of no fecal coliform bacteria (<1 MPN/100ml based on fermentation tube technique or <1 colony/100ml based on membrane filter technique); or (2) taking no action to adopt a groundwater standard for fecal coliform bacteria during this rulemaking.

9. The rationale for the proposed amendments, repeals, and adoptions is as follows:

(A) Revisions to WQB-7

The Board is proposing the amendment of 17.30.602, 17.30.622 through 17.30.629, 17.30.701, and 17.30.1001 to incorporate by reference revisions to Montana's numeric water quality standards listed in department Circular WQB-7 (December 1995 edition). The reasons for proposing these revisions to the numeric water quality standards are provided below. For more detailed information regarding the specific proposed changes to the standards, a copy of department Circular WQB-7 (August 1998 edition) may be obtained from the department upon request. The August 1998 edition of WQB-7 indicates each proposed change to the 1995 edition by interlining the material to be removed and underlining the material to be added.

The Board is proposing the adoption of numeric standards for pesticides in groundwater in response to the requirements of the Montana Agricultural Chemical Groundwater Protection Act. Pursuant to Section 80-15-201, MCA, of the Act, the Board is required to adopt groundwater standards for agricultural chemicals (pesticides) that are known or predicted to appear in

the State's groundwater. If the U.S. Environmental Protection Agency (EPA) has promulgated a maximum contaminant level (MCL) or a health advisory for a pesticide known or predicted to appear in Montana, then the standard adopted by the Board must be the same as the federal standard. If an MCL and a health advisory have been promulgated by EPA for the same pesticide, then the Board is required to adopt the MCL rather than the health advisory as the preferred groundwater quality standard. (See, 80-15-201, MCA). If no MCL or health advisory exists for a pesticide that is known or predicted to appear in Montana, then the Board is required to adopt a groundwater standard that is based upon the health effects on a person weighing 70 kilograms (approximately 155 pounds) and drinking 2 liters of water per day over a lifetime. *Id.* Accordingly, the Board is proposing to adopt new standards and revise any existing standards for parameters that are considered pesticides based upon the requirements in Section 80-15-201, MCA. For those standards that are based on health effects on a 70 kilogram person, the proposed standards are based on health effects data available from other federal data sources. The Board is also proposing to adopt surface water standards for the pesticides that require the adoption of groundwater standards under Section 80-15-201, MCA. Although not required under the provisions of the Montana Agricultural Chemical Groundwater Act, the Board considers the adoption of surface water standards for pesticides that appear within the State as necessary to protect and maintain the quality of surface waters under the Montana Water Quality Act. The proposed numeric surface water standards for pesticides are the same numeric standards proposed for groundwater. The Board is proposing to add only human health standards and not aquatic standards. No aquatic life standards are proposed because data necessary to develop aquatic life standards are not available.

In addition, the Board is proposing to revise and adopt new numeric surface water quality standards for certain parameters identified by EPA as toxic pollutants under the Federal Clean Water Act (CWA). The Board is proposing these revisions in order to fulfill its obligation to review and revise the State's water quality standards at intervals not to exceed 3 years under Section 75-5-301(3), MCA, of the Montana Water Quality Act and under Section 303(c) of the federal Clean Water Act (CWA). Although Section 75-5-301, MCA, does not specifically require the Board to adopt numeric standards for EPA's list of toxic pollutants, Section 303(c) of the CWA expressly requires states to adopt such standards during any revisions to their water quality standards. The toxic pollutants that require a numeric standard are those for which EPA has developed criteria under Section 304(a) of the CWA. The proposed revisions to Montana's standards for toxic parameters are necessary because EPA has made several revisions to its 304(a) criteria that modify the criteria relied upon by the Board when adopting the State's first numeric standards in 1994. The numeric standards originally adopted in 1994 were based upon the 304(a) criteria

published by EPA in a 1986 publication entitled "Quality Criteria For Water" (commonly referred to as the "Gold Book"). Later revisions to WQB-7 did not include modifications to the standards using EPA's revised 304(a) criteria. For this reason, the Board is proposing to revise Montana's numeric standards for toxic parameters in order to reflect the revised 304(a) criteria published by EPA at 40 CFR 131.36 [i.e., the National Toxics Rule published at 57 Fed. Reg. 60911, at 6084 (1992)], EPA's 1995 updates to "Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water" and published by EPA for the State of California [62 Fed. Reg. 42160 (1997)]. The Board has not proposed to adopt more stringent standards because Section 75-5-203, MCA, prohibits adoption of standards that are more stringent than comparable federal standards unless the Board makes certain findings based on peer-reviewed scientific studies. The Board has not made these findings.

The Board is also proposing to revise all of the surface and groundwater standards that are based on the MCLs listed in the 1995 edition of WQB-7. The Board is proposing these revisions in order to reflect EPA's latest revisions to the MCLs in furtherance of the Board's duty to revise the State's water quality standards under Section 75-5-301(3), MCA. These revisions are necessary because the Board is required to adopt MCLs as the human health standards for groundwaters and as the surface water standard for certain carcinogens, pursuant to Section 75-5-301(2), MCA.

Other changes to WQB-7 are being proposed in order to change the identification of some toxic and carcinogen parameters. Some parameters are identified as carcinogens in the current edition of WQB-7 are now being proposed for listing as a toxin. This revision is based upon new information that indicates that these parameters are not carcinogenic. It is necessary to classify these parameters correctly so that the proper non-degradation significance threshold is applied to each parameter (see ARM 17.30.715 for thresholds). For the same reason, some parameters originally identified as toxins are now being proposed for listing as a carcinogen. These proposed changes in the identification of certain toxins and carcinogens are identified within the August 1998 edition of WQB-7.

The Board is also proposing changes to the Required Reporting Value (RRV) for parameters whose RRV significantly exceeds the numeric standard for the parameter. This proposed change is necessary in order to ensure that any required sampling will more accurately reflect whether the standards are being met. See endnote No. 10 in the proposed August 1998 edition of WQB-7 for a description of the new RRV.

In order to simplify the listing of parameters in WQB-7, the Board is proposing to remove the various forms of certain chemicals and include them in one entry. Specifically, the Board

is proposing to delete the various forms of PCB, asbestos, and radioactive substances and list each of those parameters in a single entry. These proposed changes are identified in the proposed August 1998 edition of WQB-7.

WQB-7 also contains trigger values for determining what changes in water quality are considered non-significant and therefore do not trigger the non-degradation review process. The Board is also proposing to change the trigger value for Nitrate (as Nitrogen) and Nitrate plus Nitrite (as Nitrogen) in groundwater from 2,500 to 5,000 $\mu\text{g/L}$. This change is being proposed in order to equalize the nonsignificance thresholds for all sources of domestic sewage. The Board is proposing a trigger value of 5,000 because that is the level of nonsignificance adopted by the Legislature for nitrate as nitrogen in groundwater from domestic sewage effluent discharged from a conventional septic system pursuant to 75-5-301(5), MCA.

(B) Proposed Revisions to the Groundwater Rules.

Rule I contains a statement establishing the regulatory effect of the standards identified in Rule II and an explanation of the use of mixing zones and the basis for establishing the classifications is provided in Rule I. The rule contains no substantive requirements. It is proposed to provide an explanation of how those substantive requirements in Rule II mesh with other legal requirements.

One reason that the Board is proposing the repeal of ARM 17.30.1003 and the adoption of Rule II is that the current language in ARM 17.30.1003 does not clearly specify that the human health standards in WQB-7 are the water quality standards for groundwater, as originally intended when this rule was amended. See, MAR Notice No. 16-2-502 (May 11, 1995). In addition, the language in subsections (2) and (3) of 17.30.1003, which refers to "these standards" and "concentrations of other...substances", is vague and confusing. Nowhere in the rule does the language clearly identify or establish what "these standards" and "other substances" are. In order to clarify the applicable groundwater standards for each classification, the Board is proposing to list the specific groundwater standards within each classification of groundwater, as proposed in Rule II.

Under 17.30.1002, groundwaters in each classification are described as being "suitable" or "marginally suitable" for the specific uses listed under each classification. Except for Class III, New Rule II does not change the specific beneficial uses listed under each classification, but it requires that the groundwaters for each classification be maintained as "suitable" or "marginally suitable" for those uses. This change in language is being proposed to clarify and ensure that the Department has the authority to require the maintenance of

beneficial uses that is independent of the authority to enforce numeric standards if those standards are not adequate, the use can nevertheless be protected.

As for Class III groundwaters with a specific conductance that is less than 5,000 microSiemens/cm at 25°C, the beneficial uses have been changed in New Rule II to add drinking water and require the maintenance of these waters as "marginally suitable" for drinking water. Class III groundwaters with a specific conductance of less than 5,000 microSiemens/cm at 25°C are at least marginally suitable for drinking water. The change is proposed to ensure that these waters remain suitable for these uses.

ARM 17.30.1002 and 17.30.1003 separate the beneficial use descriptions from the groundwater standards. For convenience, New Rule II lists the specific groundwater standards applicable to each classification immediately following the description of the beneficial uses for each classification.

Finally, New Rule II eliminates the nitrate-nitrogen standard for all groundwaters with a specific conductance greater than 5,000 microSiemens/cm at 25°C and also eliminates some of the numeric standards in WQB-7 for all Class IV groundwaters and the nitrate-nitrogen standard in all classifications where the hydraulic conductivity is very low. These are substantial changes from the current rule establishing groundwater standards. Under 17.30.1003, every classification is subject to all of the numeric standards, including the nitrate-nitrogen standards, listed in WQB-7.

Groundwaters with a specific conductance greater than 5,000 microSiemens/cm at 25°C are not suitable for human consumption due to their salt content. Therefore, the adoption of the human health-based nitrate-nitrogen standard is not necessary to protect the beneficial uses of the waters (some Class III and all Class IV groundwaters) with this specific conductance. Similarly, the adoption of non-carcinogenic human health standards for Class IV groundwaters, which are only suitable for industrial purposes, is not necessary to protect those waters for industrial use. In order to ensure that any contamination of Class IV groundwaters will not harm existing beneficial uses or potentially harm human health, Rule II requires the protection of existing uses of Class IV groundwaters and prohibits concentrations of cancer-causing substances from exceeding the levels listed in WQB-7.

In addition the proposed modifications to the standards would eliminate the nitrate-nitrogen standard for waters where the hydraulic conductivity (a measure of the rate at which water moves through the ground) is very low. In these situations, it is very unlikely that this water can be physically or economically extracted from the ground in sufficient volumes to

support domestic uses. In all cases the proposed rules require the protection of existing uses. These proposed modifications also make it clear that the nondegradation provisions do not apply to Class III and Class IV groundwaters, because they are not "high quality waters", as defined in 75-5-103, MCA.

Rule III modifies the methods required for collection and analysis of groundwater samples by adopting by reference more recent publications establishing these methods. These modifications are proposed because the publications proposed to be incorporated by reference provide for greater precision and accuracy in measurement and because they contain methods for compounds that have been developed or begun to be used since issuance of the publications that are referenced in ARM 17.30.1003. The current rule therefore does not contain methods for detection of these newer compounds.

The language and format of New Rule I, II, and III is so different from the existing rules that, rather than simply amend 17.30.1002 and 17.30.1003, the Board is proposing to repeal and replace those existing rules.

- (C) Request for comment on whether additional changes to WQB-7 should be made.

The Board has been advised that the Department has received informal public comment suggesting additional changes to WQB-7. The Board, therefore, is soliciting comments from the public on whether the following additional changes should be made in WQB-7.

- (1) Iron and Manganese -- These standards are based on objectionable qualities, such as taste, odor, and staining, and not physiological effects. Iron and manganese are essential growth nutrients for both plant and animal species and are found in natural waters in varying concentrations. At higher concentrations, these elements may have undesirable physiological effects, particularly manganese. The Montana Water Quality Act requires that quality and potability of state waters for public water supply be maintained (Class A-1, B-1, B-2, and B-3 surface waters and Class I, II, and some Class III groundwater). Iron and manganese are not removed by conventional treatment employed in domestic water supplies. The Board is considering the following actions:
 - (i) maintaining the current numeric water quality standards for iron and manganese in WQB-7. The rationale for this action would be to maintain a standard that is not necessary for the protection of human health, but necessary to keep state waters free from substances that produce objectionable odors,

tastes, and staining;

(ii) deleting the numeric standard for iron and manganese from QWB-7. The rationale for this action would be to eliminate the current numeric standards that are not necessary for the protection of human health and rely on narrative standards to determine acceptable concentrations of iron and manganese on a case-by-case basis depending on the water use classification; or,

(iii) adopting a numeric standard of 1.0 mg/L for manganese based on human health effects. The rationale for this action would be to delete the current standard for manganese that was adopted to keep state waters free from objectionable qualities and adopt a less stringent standard that protects human health. Since there is no evidence that a health based standard for iron is necessary, a narrative standard would be used to determine acceptable levels of iron on a case-by-case basis depending on the water use classification. The current iron standard (1.0 mg/L) for aquatic life in surface waters would not be affected by this action.

- (2) Cyanide -- The Board is considering an amendment to provide that the human health standard for cyanide be expressed as free cyanide rather than total cyanide as it is currently listed in QWB-7. The basis for this proposal is that it is generally accepted that free cyanide (CN⁻ and HCN) is the most toxic form of cyanide. Cyanide forms both simple and complex associations with a number of other ions (alkali and metal complexes). Simple complexes readily dissociate in water and produce free cyanide, whereas, the complex cyanide compounds vary widely in their propensity to dissociate and hence their toxicity. The term "cyanide" refers to all of the CN groups in a compound that can be measured by a particular method. Total cyanide measures the greatest amount of cyanide in a given compound, whereas, free cyanide measures the least amount. Other methods of measurements are available that measure different portions of the cyanide present. Federal regulations (40 CFR 136) require that MPDES discharge permits issued by the Department be expressed in terms of total cyanide or weak acid dissociable. The Board is considering the following actions:

(i) maintaining the current language of total cyanide. This action would maintain the current most conservative approach of using an analytical method that measures all forms of cyanide, including both toxic and non-toxic forms of cyanide. The rationale for maintaining this standard is that some total cyanide may convert to free cyanide, the most toxic form, and thereby cause harm to public health; or,

(ii) expressing the cyanide standard in terms of some other analytical method (amenable to chlorination, weak acid dissociable, free cyanide). The rationale for this approach is that the public health will be protected even if the standard is expressed one of these ways.

- (3) MBTE -- The Board is considering adopting a numeric water quality standard for Methyl Tertiary-Butyl Ether (MTBE). MTBE is an organic compound which has been added to gasoline as an octane enhancer since the late 1970's. It is highly soluble in water and has contaminated some water supplies as a result of petroleum releases. In December 1997, the U.S. EPA issued a drinking water advisory for MTBE which recommended that concentrations in the range of 20 to 40 $\mu\text{g/L}$ would likely avoid unpleasant taste and odor effects. This level is 4 to 5 orders of magnitude lower than the lowest concentration that caused observable health effects in animals (EPA 822-F-97-008). MTBE is listed as a possible human carcinogen (Class C). The Board is considering the following:

(i) adopting a numeric standard for MTBE in the range of 20 to 40 $\mu\text{g/L}$. The rationale for this action would be to protect state waters from objectionable tastes and odors; or,

(ii) taking no action to adopt a numeric standard for MTBE at this time. The rationale for this action would be to rely on a narrative standard to determine acceptable concentrations of MTBE on a case-by-case basis depending on the water use classification.

- (4) Fecal Coliform -- The Board is considering adopting a numeric water quality standard for fecal coliform bacteria in groundwater. Class I and II, and, to a limited extent, Class III groundwaters are used for public and private water supply and are used with little or no treatment prior to human consumption. Fecal coliform bacteria are present in human sewage and other animal waste and are indicative of other potentially more harmful pathogens, such as viruses. Analytical procedures for fecal coliform bacteria are more readily available than for other pathogens. The board is considering the following actions:

(i) adopting a standard that prohibits detectable levels of fecal coliform bacteria (<1 MPN/100ml based on fermentation tube technique or <1 colony / 100ml based on membrane filter technique) in groundwater. The rationale for this action would be to adopt a standard that protects groundwater from detectable pathogens such as fecal bacteria; or,

(ii) not adopting a numeric standard for fecal coliform bacteria in groundwater. The rationale for this proposed action would be to rely on other control

measures, such as a nitrate-nitrogen standard, to protect groundwater for human consumption.

10. Interested persons may submit their data, views or arguments concerning the proposed rules either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, no later than September 15, 1998.

11. The Board shall preside over and conduct the hearing.

CINDY E. YOUNKIN, Chairperson
BOARD OF ENVIRONMENTAL REVIEW

by


Joe Gerbase

Reviewed by:


John F. North, Rule Reviewer

Certified to the Secretary of State July 6, 1998.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the proposed adoption)
of 14 new rules; the proposed amendment)
of ARM 24.9.101 through 24.9.105,)
24.9.210, 24.9.212, 24.9.213, 24.9.218)
through 24.9.226, 24.9.230, 24.9.231,)
24.9.261, 24.9.262A, 24.9.263, 24.9.264,)
24.9.301 through 24.9.309, 24.9.312)
through 24.9.315, 24.9.317, 24.9.321,)
24.9.323, 24.9.324, 24.9.329, 24.9.330,) NOTICE OF PUBLIC
24.9.401, 24.9.404 through 24.9.407,) HEARING ON THE
24.9.409, 24.9.601, 24.9.603,) PROPOSED ADOPTION,
24.9.607, 24.9.1406 through 24.9.1410,) AMENDMENT AND REPEAL
24.9.1412, 24.9.1501 through 24.9.1503,) OF RULES
and 24.9.1506 through 24.9.1508; and the)
proposed repeal of ARM 24.9.204 through)
24.9.209, 24.9.216, 24.9.1504 and)
24.9.1505, all relating to the)
organization and functions of the)
Montana Human Rights Commission)

TO: ALL INTERESTED PERSONS

1. On August 10, 1998, at 7:00 p.m., a public hearing will be held by the Montana Human Rights Commission in the basement conference room of the Montana School for the Deaf and Blind, 3911 Central Avenue, Great Falls, Montana, to consider the proposed adoption, amendment and repeal of rules pertaining to the organization and functions of the Montana Human Rights Commission.

2. The Montana Human Rights Commission will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department of Labor and Industry by not later than 5:00 p.m., August 5, 1998, to advise us of the nature of the accommodation that you need. Please contact the Human Rights Bureau, Attn: Jerry Keck, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4345; TTY (406) 444-0532; fax (406) 444-2798.

3. This proposed adoption, amendment and repeal of rules is necessary to implement statutory changes to the Montana Human Rights Act and the Governmental Code of Fair Practices made during the 1997 session of the Montana legislature. This legislation (Chapter 467, Laws of 1997 - Senate Bill 350) restructured the organization of the Montana Human Rights Commission and revised the administrative procedures for enforcement of the human rights laws. Effective for all complaints filed on or after July 1, 1997, the Montana Human Rights Commission is no longer responsible for receiving, investigating, conciliating or hearing complaints of

discrimination. Those responsibilities, along with the staff of the Commission, have been transferred to the Human Rights Bureau and the Hearings Bureau of the Department of Labor and Industry. For these "new law" cases, the Commission is the designated appeal body. It hears objections to the Department's dismissal of complaints and appeals of the Department's final orders issued after contested case hearings. In addition to this organizational change, the legislature instituted a number of procedural changes for the enforcement of the human rights laws, which are effective only for these "new law" cases.

For those complaints which were filed before July 1, 1997, neither the responsibilities of the Commission nor the procedures for enforcement have changed. The Commission is still responsible for investigating, conciliating and hearing these complaints of discrimination. For ease and efficiency of administration, it has delegated these duties to the Department, which acts on behalf of the Commission. For these "old law" cases, the Commission still hears objections to the Department's dismissal of complaints, hears exceptions to the Department's proposed orders issued after contested case hearings, and issues final orders. For these cases, the statutory provisions regarding the procedures for enforcement still exist in their pre-1997 form.

As a consequence of this new organizational and procedural scheme, the administrative rules of the Commission require substantial amendment to accurately reflect the Commission's different responsibilities for old and new law cases, as well as the different procedural rules applicable to them. This requires the Commission's procedural rules to be divided into rules applicable to new law cases and rules applicable to old law cases. First, the Commission must adopt new procedural rules for new law cases because they are substantively different from those which are applicable to old law cases. Secondly, the procedural rules applicable to old law cases, while they remain largely the same in substance, must be amended to identify the Department (rather than, or in addition to, the Commission) as the agency which is actually performing those duties. Finally, the Commission's substantive and interpretive rules regarding the laws prohibiting discrimination will continue to apply to both old and new law cases, since nothing in the 1997 legislative changes altered the substance of those laws.

In the effort to make its administrative rules consistent with the revised statute, the Commission has taken the following overall approach to these proposed amendments:

(a) The rules in seven sub-chapters will apply to both old and new law cases, either because they describe the organizational structure and relationship of the Commission to the Department, or because they are substantive rules interpreting the human rights laws. These are: Sub-Chapter 1 (Organizational Rules), Sub-Chapter 6 (Proof of Unlawful Discrimination), Sub-Chapter 10 (Sex Discrimination in

Education), Sub-Chapter 11 (Interpretive Rules), Sub-Chapter 12 (Maternity Leave), Sub-Chapter 13 (Insurance and Retirement Plans), and Sub-Chapter 14 (Guidelines for Employment). Except for Sub-Chapter 1, which requires substantial changes to reflect the new organizational structure, all of these sub-chapters are either unchanged or contain only minor amendments.

(b) The rules in five sub-chapters will apply to only old law cases, because they describe the procedures for enforcement of human rights laws which were provided by statute prior to the effective date of the statutory changes. These are: Sub-Chapter 2 (Investigation and Conciliation), Sub-Chapter 3 (Contested Case Hearing), Sub-Chapter 4 (Declaratory Rulings), Sub-Chapter 8 (General Provisions) and Sub-Chapter 15 (Housing Discrimination Procedures and Definitions). The rules in these sub-chapters require almost no substantive changes and only minor amendments to clarify both their applicability to old law cases and the fact that the Commission, while still responsible for the cases, has delegated much of its duties to the Department. Sub-Chapter 8 is included because the subject matter of its only rule, relating to employment records, may not be within the scope of the Commission's regulatory powers in new law cases.

(c) The proposed new rules III through XIV will be joined in one new sub-chapter and will apply to only new law cases, because they have been drafted to accord with the new statutory provisions for the Commission's appellate responsibilities in new law cases. Because the Department is responsible for most stages of the administrative process for new law cases, the Department will adopt new rules separately which address those duties.

4. The Montana Human Rights Commission proposes to adopt new rules as follows:

NEW RULE I. APPLICABILITY OF RULES (1) The administrative rules in this chapter apply to the disposition of complaints of discrimination as follows:

(a) For complaints filed before July 1, 1997, only the administrative rules in the following sub-chapters apply:

- (i) sub-chapters 1 through 4;
- (ii) sub-chapter 6;
- (iii) sub-chapter 8; and
- (iv) sub-chapters 10 through 15.

(b) For complaints filed on or after July 1, 1997, only the administrative rules in the following sub-chapters apply:

- (i) sub-chapter 1;
- (ii) sub-chapter 6;
- (iii) sub-chapter 8;
- (iv) sub-chapters 10 through 14; and
- (v) [newly created sub-chapter].

AUTH: 49-2-204 and 49-3-106, MCA

IMP: Title 49, Chapters 2 and 3, MCA

NEW RULE II PURPOSE AND SCOPE OF RULES (1) The rules in this sub-chapter describe the procedures followed by the department in investigating and conciliating complaints filed before July 1, 1997.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-504, MCA

NEW RULE III PURPOSE AND SCOPE OF RULES (1) The purpose of the rules in this sub-chapter is to set forth the procedures the commission will follow for hearing party objections to dismissal of cases under 49-2-509(4), MCA and appeals of final orders under 49-2-505(4), MCA. These rules apply only to complaints of discrimination filed on or after July 1, 1997.

(2) The commission will give liberal construction to the rules to effectuate the purposes of the human rights statutes of Montana within the commission's jurisdiction. "Liberal construction" means, without limitation, giving broad coverage and inclusive interpretation to human rights statutes and rules to assure enforcement and protection of the rights secured by them.

(3) The commission may suspend, waive or modify these rules for good cause to expedite decision, prevent manifest prejudice to a party, assure a fair hearing, or afford substantial justice.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-204, 49-2-205, 49-2-501, 49-2-504, 49-2-505 and 49-2-509, MCA

NEW RULE IV DOCUMENT FORMAT, FILING AND SERVICE (1) All documents, pleadings, and papers to be filed shall be eight and one-half inches by eleven inches (8½" x 11") in size. Papers must be double-spaced, clearly legible and submitted on calendared bond paper in accordance with the format for papers used in district court. Exhibits or other documents shall be reproduced in like size unless the original exhibit is required. The commission may require the reproduction of an oversized demonstrative or other exhibit in a size appropriate for the record.

(2) The place of filing is the offices of the Human Rights Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728.

(3) Filing with the commission is effective upon actual receipt at the offices of the department and not upon mailing.

(4) Parties shall submit the original (or original copy) and six copies of all submissions for the record, unless otherwise directed by the commission.

(5) Copies of all submissions filed must be served upon all parties of record, including intervenors or other parties allowed to appear for special purposes, and all submissions must contain or be accompanied by a certificate of service showing proof of the method of service and the date upon which such service was made. Service of copies of submissions upon parties shall be made in accordance with Rule 5 of the Montana Rules of Civil Procedure and may be made by means of first class mail,

postage prepaid, unless the commission designates another manner of service.

(6) The commission may accept telephonic or oral filings of motions or requests for procedural relief, subject to recording by means of minute entry, note or the subsequent filing of a true and accurate recording of such matters, upon fair and timely notice to all parties of record.

(7) Filing of a facsimile copy of a document of no more than 20 pages, which is an exact duplicate of the original, shall meet the filing requirements of these rules only if the facsimile copy is followed within five days by filing of the original or original copy of the document and required copies.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-106, 49-2-2-4, 49-2-505 and 49-2-509, MCA

NEW RULE V TIME (1) In accordance with Rule 6(a) of the Montana Rules of Civil Procedure, in computing any period of time for acts required by any of the commission's rules, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, legal holiday, or the department offices are closed on such day. In that event, the period runs until the end of the next day when the department offices are open which is not one of the aforementioned days. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in computation. A half holiday will be considered as other days and not as a holiday.

(2) In accordance with Rule 6(d) of the Montana Rules of Civil Procedure, whenever a party has a right or is required to do some act under any of the commission's rules within a prescribed period after service of a notice or other paper upon the party and service is by mail, three days shall be added to the prescribed period. The date of service is computed from the date on which service is made by mail, as shown by the certificate of service or date of mailing. Service by mail is complete upon mailing.

(3) Except as to dates fixed by statute and not subject to modification, the commission may enlarge the time to perform an act. In accordance with Rule 6(b) of the Montana Rules of Civil Procedure, the time may be enlarged for cause shown, with or without a motion or notice, when a request for enlargement of time is made prior to the expiration of the time in which the act is to be performed. If the request is made after the expiration of the specified period in which to act, enlargement may be allowed only upon a showing of excusable neglect in the failure to act.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-204, 49-2-505 and 49-2-509, MCA

NEW RULE VI JURISDICTION TO CONSIDER JURISDICTION

(1) The commission shall, at all times, have jurisdiction to determine the jurisdiction of the commission and the department over any particular contested case. In such

situations the rules of procedure of the commission shall apply, and questions of jurisdiction may be resolved by rulings and orders based upon the pleadings or after a hearing, as required to suit the circumstances of the case.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-204, 49-2-505 and 49-2-509, MCA

NEW RULE VII INCORPORATION OF OTHER PROCEDURAL RULES BY REFERENCE (1) To the extent these rules do not provide for or specify procedures, or where necessary to supplement these rules, the commission may apply the provisions of the Montana Rules of Civil Procedure and Montana Rules of Evidence. Those procedural provisions are applicable to the extent they may clarify fair procedures, expedite determinations, and assist in the adjudication of rights, duties or privileges of parties before the commission.

AUTH: 49-2-204 and, 49-3-106, MCA

IMP: 2-4-612, 49-2-204, 49-2-505 and 49-2-509, MCA

NEW RULE VIII DISQUALIFICATION OF A MEMBER OF THE COMMISSION (1) A party may disqualify a member of the commission from presiding over any matter governed by these rules only upon an affirmative showing, made in good faith, of personal bias, a lack of independence, disqualification by law or other ground for disqualification allowed by law.

(2) A party seeking to disqualify a member of the commission may do so only upon the filing of a motion which is supported by a sufficient affidavit showing the particular facts and matters which constitute good cause for disqualification under (1). The party must file the motion and affidavit no later than ten days before an original date set for hearing of the appeal. Should a continuance of any proceeding be required by the act of a party in seeking disqualification, such act shall not justify the dismissal of a complaint where an appeal was scheduled to be heard within 120 days of the date of service of a notice of appeal.

(3) Following the filing of a motion and affidavit of disqualification and a reasonable period of time for an opposing party to comment upon it, the commission shall either enter an order of recusal or decline the member's disqualification. That order must specify the particular facts and grounds upon which it is based.

(4) The question of disqualification shall be determined by a quorum of the commission, which may include the member of the commission to be disqualified if his or her participation is required to constitute a quorum or decide the matter.

(5) A member of the commission may make an order or give a notice of recusal or self-disqualification at any time.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-611, 49-2-204, 49-2-505 and 49-2-509, MCA

NEW RULE IX EX PARTE CONSULTATIONS (1) In accordance with 2-4-613, MCA, no member of the commission may participate in or initiate any ex parte consultation as defined in (2) on

the merits of a matter with any party or the department. A member of the commission may engage in a communication concerning administrative or procedural matters where they are necessary under the circumstances and do not adversely affect the substantial rights of a party.

(2) "Ex parte consultation" means the act of a party to a contested case, any employee of the department, any person having an interest in the outcome of a contested case or any other person not authorized by law, communicating with a member of the commission regarding the merits of any contested case. Communications which do not constitute discussions or information regarding an issue of fact or law in a contested case, such as discussions of enlargements of time, scheduling, administrative matters and/or questions of procedure do not constitute ex parte communications.

(3) The commission may consult with any person not a party to the pending matter, or with the department regarding the interpretation of a point of law.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-613, 49-2-204, 49-2-505 and 49-2-509, MCA

NEW RULE X APPLICATION OF RULES AND UNREPRESENTED PARTIES

(1) Where errors of law or procedure do not cause prejudice to a party or deny a party a fair hearing or fundamental justice, they may be disregarded. Parties who assign error for the violation of any rule must demonstrate that a failure to comply with these rules is in fact prejudicial or constitutes prejudice as a matter of law.

(2) Where strict adherence to these rules would cause undue hardship or create a substantial injustice to a party, the commission may modify, waive, or excuse their application. The commission may not modify, waive, or excuse mandatory acts which are required by statute or due process of law.

(3) Parties who choose not to be represented by counsel and who represent themselves must substantially comply with the provisions of these rules, subject to the provisions of (2). The commission may modify the strict application of these rules to an unrepresented party to the extent they are not mandatory in order to assure a fair hearing.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-204, 49-2-505 and 49-2-509, MCA

NEW RULE XI OBJECTIONS TO DISMISSAL OF COMPLAINT

(1) A party who is dissatisfied with a department decision to dismiss a complaint pursuant to 49-2-509, MCA, may seek commission review of the decision by filing or mailing a written objection within 14 days after the decision is served. The date of mailing will be established by U.S. postal service postmark. Briefs are not required. A party who makes an objection and wishes to file a supporting brief must file and serve an original and six copies of the brief within five days of filing or mailing the objection. Any opposing party who wishes to file an answer brief must file and serve an original and six copies of the brief within ten days of service of the initial brief.

A party making an objection who wishes to file a reply brief must file and serve an original and six copies of the brief within ten days of service of an answer brief. If a party making an objection does not file a supporting brief, any opposing party may request permission from the commission to file a brief in opposition to the objection.

(2) Briefs on objections to the dismissal of a complaint may not exceed ten pages in length. Each party's brief should provide copies of any specific exhibits from the record which the party believes are essential for the commission to read. Requests for oral argument must be made in writing at the time of filing the first brief of each party. If the request is contained in a brief, the caption should indicate that oral argument is requested. If a request for oral argument is timely made, ten minutes for each party will be reserved for oral argument during the commission meeting at which the objection will be considered.

(3) The objection will be considered at the next commission meeting after conclusion of the briefing schedule. Consideration of the objection will be based upon the written record unless oral argument is requested and authorized by the commission. The commission will review an objection under an abuse of discretion standard.

(4) If the commission sustains the objections to the dismissal of a complaint, it will reopen the case by remanding it to the department.

(a) If the complaint has not yet been formally investigated, and not more than 90 days (housing cases) or 120 days (non-housing cases) have passed since the date of filing, it will be remanded to the human rights bureau for investigation.

(b) If the complaint has been formally investigated, or if more than 90 days (housing cases) or 120 days (non-housing cases) have passed since the date of filing, it will be remanded to the hearings bureau to be certified for hearing.

(5) If the commission affirms the dismissal of a complaint, it will notify the parties of its decision in writing within seven days. The charging party will have 90 days after receipt of the commission's order affirming the dismissal of a complaint to petition the district court for appropriate relief.

(6) A party may ask the district court to review a decision of the commission to remand a contested case to the department or to affirm the dismissal of the complaint.

(7) If the court later finds that it does not have jurisdiction over a contested case in which the complaint was improperly dismissed, then the charging party may apply to the department to reopen the complaint.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-204 and 49-2-509, MCA

NEW RULE XII APPEAL OF FINAL ORDERS OF THE DEPARTMENT

(1) Following entry of a final order after a contested case hearing, pursuant to 49-2-505, MCA, parties shall have the opportunity to file an appeal, present briefs and present oral

argument to the commission as provided in this rule.

(a) Once a final order is entered in a contested case, a party that wants to appeal shall provide notice of appeal to the commission, the department, and all parties within ten business days of its receipt of the final order. All parties filing an appeal shall submit an original (or original copy) and six copies of all submissions for the record unless otherwise directed by the commission. The department may reject and return any submission which does not include the required number of copies.

(2) The commission may reject or modify the conclusions of law and interpretations of administrative rules in the final order but may not reject or modify the findings of fact unless the commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The commission may accept or reduce any recommended award or penalty but may not increase it without reviewing the complete record.

(a) Unless all parties stipulate otherwise, a party filing an appeal requiring commission review of the complete record, must file six copies of all contested case pre-hearing submissions, hearing exhibits, a transcript of the hearing, all post-hearing submissions and the final order.

(b) A party filing an appeal not requiring commission review of the complete record must file six copies of all portions of the contested case record, including the final order, required for the commission's review of the appeal.

(3) If a party filing an appeal does not intend to file a transcript of the hearing, the party must file and serve the appeal, a supporting brief and the portions of the record required for commission review of the appeal within 20 days of service of the final order. Any opposing party must file and serve an answer brief within ten days of service of the appeal and supporting brief. The party filing an appeal must file and serve any reply brief within ten days of service of the answer brief.

(4) If a party filing an appeal intends for the commission to review a transcript of the hearing and a transcript of the hearing has been prepared and filed with the commission prior to issuance of the final order, the party must file and serve the appeal, a supporting brief and the record within 20 days of service of the final order. Any opposing party must file and serve an answer brief within ten days of service of the appeal and supporting brief. The party filing an appeal must file and serve any reply brief within ten days of service of the answer brief.

(5) If a party filing an appeal intends for the commission to review a transcript, and a transcript of the hearing has not been prepared and filed prior to issuance of the final order, a party filing an appeal must file a notice of intent to file an appeal stating that commission review of a transcript of the hearing is required.

(a) After the notice of intent to file an appeal is filed, a party filing an appeal must arrange for preparation of a transcript of the hearing at his or her own expense. The party filing an appeal must file an original and six copies of the transcript with the commission within 40 days of filing the notice of intent to file an appeal.

(b) If more than one party gives notice of intent to file an appeal, all parties filing an appeal which require review of a transcript of the hearing must share equally in the cost of the transcript and copies.

(c) A party filing an appeal must file the appeal, a supporting brief and the record within 20 days of the date of filing the transcript. Any opposing party must file and serve an answer brief within ten days of service of the appeal and supporting brief. The party filing an appeal must file and serve any reply brief within ten days of service of the answer brief.

(6) No enlargement of time will be allowed for compliance with any of the requirements of this rule except on a showing of good cause.

(7) Except upon stipulation of all parties, a transcript shall be prepared by an impartial person with no affiliation to any party and with no interest in the outcome of the contested case. A transcript shall be a verbatim and complete account of all proceedings on the record of the hearing and shall be in the form commonly accepted by the courts of record of this state. The preparer of a transcript shall certify that the transcript is a complete and accurate account of the stenographic or electronic recording of the hearing and that the preparer has no affiliation with any party and has no interest in the outcome of the contested case.

(8) If a party filing an appeal fails to file a brief in support of the appeal within the time provided by this rule, or within any extension of time granted, any opposing party may move to strike the appeal. If an opposing party fails to file a brief in opposition to appeal within the time provided by this rule, or within any extension of time granted, that party will not be heard at oral argument except by permission of the commission.

(9) When a party has timely filed an appeal of a final order and has timely filed a supporting brief, the commission will fix a date, not later than 120 days from the notice of appeal, to provide the parties an opportunity to present oral argument to the commission. Each party is allowed one-half hour of argument before the commission. Oral argument may be waived by the parties.

(10) The chair of the commission, his or her designee, or a hearing examiner appointed by the commission may consider procedural motions and enter procedural orders as necessary for commission review.

(11) The commission may appoint a member of the commission for the purpose of conducting a prehearing conference prior to commission consideration of the appeal.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-204 and 49-2-505, MCA

NEW RULE XIII COMMISSION HEARINGS TO CONSIDER APPEALS

(1) On the date fixed by the commission for oral argument upon the appeal of a party, a quorum of the commission shall hear oral argument.

(2) Any member of the commission who is absent at the presentation of oral argument may participate in deliberations and the entry of a final decision or order of the commission if he or she, where required, reviews the complete record of the contested case, including a recording or transcript of the oral argument of the parties.

(3) At the time of oral argument, and subject to the rule of the commission chair, any member of the commission may pose questions to a party, his or her representatives.

(4) At the request of a party or a member of the commission, the date of the hearing may be continued upon a showing of good cause.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-204 and 49-2-505, MCA

NEW RULE XIV DETERMINATION OF APPEALS

(1) The commission shall render a decision which affirms, modifies or reverses the final order or remands the matter to the department within 90 days of the hearing of the appeal.

(2) All orders of monetary relief must state the basis and method of computation for amounts awarded. If a party fails to propose findings of fact in support of his or her claim for specific monetary relief, the commission may require the parties to submit the necessary computation required for relief or may decline the relief.

(3) Regardless of the claims of the parties, the commission may grant all relief permitted by 49-2-506, MCA, including full affirmative relief in the public interest, subject to the provisions of 2-4-621, MCA with respect to an increase of award over that recommended in the final order.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-204, 49-2-505 and 49-2-506, MCA

Reason: There is reasonable necessity to adopt proposed NEW RULES I and II in order to identify which rules of the Commission apply to complaints filed before July 1, 1997 (the "old law" cases), and which rules apply to complaints filed on or after July 1, 1997 (the "new law" cases), in order to implement the provisions of Chapter 467, L. of 1997 (Senate Bill 350). The distinction is necessary because the substantive provisions of Chap. 467, L. of 1997, apply only to complaints filed on or after July 1, 1997. In addition, the rule is reasonably necessary to give effect to the applicability and savings clause in sec. 20, Chap. 467, L. of 1997, which provides that the provisions of the bill do not apply to complaints filed before the effective date of the bill, July 1, 1997. NEW RULE I applies to old and new law cases, and will be codified in Sub-Chapter 1 (Organizational Rules). NEW RULE II applies to old

law cases only, and will be codified at the beginning of Sub-Chapter 2 (Investigation and Conciliation).

There is reasonable necessity to adopt proposed NEW RULE II in order to provide that the rules in the sub-chapter relating to investigation and conciliation apply only to complaints filed before July 1, 1997.

There is reasonable necessity to adopt proposed NEW RULES III through XIV in order to provide for the procedures that the Commission will apply when sitting in its new appellate role for hearing matters related to complaints filed on or after July 1, 1997. Proposed NEW RULES III through XIV implement the substantive provisions of Chap. 467, L. of 1997. NEW RULES III through XIV apply to new law cases only, and will be codified together in a new sub-chapter. These new rules are based on the Commission's current rules of procedure contained in Sub-Chapters 2 (Investigation and Conciliation) and 3 (Contested Case Hearing), which described the general procedures the Commission and its staff (including hearing examiners) would follow at the investigative, hearing and appeal stages of the process. (Sub-Chapters 2 and 3 are being amended to reflect the current organizational structure, and will be applicable only to old law cases.) For new law cases, the Commission acts alone (it has no staff or hearing examiners), and is limited to an appellate role. Therefore, many of the differences between these new rules and the old rules upon which they were modeled exist solely for the sake of organizational clarity. More significant differences reflect the new statutory provisions regarding the procedure the Commission is to follow in performing its appellate role. In particular:

NEW RULE III is modeled on ARM 24.9.301. It is revised to clarify that the rules in this new sub-chapter will apply only to the Commission's exercise of its appellate role in new law cases, and to eliminate reference to the Commission's hearing examiners.

NEW RULE IV is modeled on ARM 24.9.314. It is revised to clarify where documents should be filed for the Commission, to specify which rule of civil procedure applies, and to eliminate reference to the Commission's hearing examiners.

NEW RULE V is modeled on ARM 24.9.315. It is revised to specify which rules of civil procedure apply, and to eliminate reference to the Commission's hearing examiners.

NEW RULE VI is modeled on ARM 24.9.303. It is revised to eliminate reference to the Commission's hearing examiners.

NEW RULE VII is modeled on ARM 24.9.304. Consistent with the new statutory provisions, it is revised to eliminate reference to the Montana Administrative Procedure Act and the Montana Uniform District Court Rules.

NEW RULE VIII is modeled on ARM 24.9.307. It is revised to eliminate references to the Commission's hearing examiners, and to replace the reference to the hearing date with a reference to the appeal date.

NEW RULE IX is modeled on ARM 24.9.302 and 24.9.308. It is revised to specify which rule of administrative procedure applies, to eliminate reference to the Commission's hearing examiners, and to include the definition of "ex parte consultation," previously contained in a separate rule.

NEW RULE X is modeled on ARM 24.9.316. It is revised to eliminate reference to the Commission's hearing examiners.

NEW RULE XI is modeled on ARM 24.9.264. It is revised to provide a reasonable process for the Commission's remand of cases after objection to dismissal, given the new statutory timelines imposed at the investigative and hearing stages.

NEW RULE XII is modeled on ARM 24.9.329. It is revised to clarify that the Commission is reviewing final (rather than proposed) orders, to specify that the parties have ten business days to file an appeal, to clarify the procedures regarding submissions of transcripts, to specify that the Commission will hear the appeal within 120 days of its filing, and to eliminate reference to the Commission's hearing examiners.

NEW RULE XIII is modeled on ARM 24.9.330. It is revised to add a provision allowing the date of hearing to be continued upon a showing of good cause.

NEW RULE XIV is modeled on ARM 24.9.331. It is revised to eliminate reference to procedures associated with the Commission's review of proposed orders, to substitute a process for the Commission's review of final orders, to specify that the Commission will issue its determination within 90 days of the appeal, and to eliminate reference to a statute which has been repealed for new law cases.

5. The Montana Human Rights Commission proposes to amend the following rules as follows: (matter to be added is underlined; matter to be deleted is interlined)

24.9.101 ORGANIZATION OF THE HUMAN RIGHTS COMMISSION

(1) The human rights commission ~~(commission)~~ is established by ~~section~~ 2-15-1706, MCA. The commission is composed of five members of the public appointed by the governor. The commission is allocated to the ~~Department of~~ Department of Labor and Industry ~~(department)~~ for administrative purposes only. ~~The commission is empowered to hire personnel, seek funds, and determine matters of policy concerning its own budget.~~ The commission adopts rules separately.

(2) The commission is designated a quasi-judicial board for purposes of ~~section~~ 2-15-1706, MCA. Its purpose is ~~to hear~~

~~complaints of discrimination filed under Montana's human rights laws and to implement the policy to uphold the laws of the state of Montana against discrimination.~~

~~(a) For complaints filed before July 1, 1997, the commission is responsible for investigating, conciliating and hearing the allegations of discrimination made in the complaint. These functions are delegated to the department of labor and industry, which acts on behalf of the commission. The commission hears objections to dismissals of complaints, hears exceptions to proposed orders issued after contested case hearings, and issues final orders.~~

~~(b) For complaints filed on or after July 1, 1997, the department is responsible for investigating, conciliating and hearing the allegations of discrimination made in the complaint. The commission hears objections to dismissals of complaints and hears appeals of final orders issued after contested case hearings.~~

AUTH: 2-15-1706, 49-2-204 and 49-3-106, MCA

IMP: 2-4-201, 49-2-501 through 49-2-510, MCA

24.9.102 RESPONSIBILITIES OF THE DEPARTMENT OF LABOR AND INDUSTRY STAFF OF THE HUMAN RIGHTS COMMISSION (1) ~~The human rights commission staff is responsible for investigating complaints of discrimination, presenting cases before the commission, serving as staff of the Commission, and acting for the commission to implement the policy of the state of Montana against discrimination.~~

~~(1) For all complaints of discrimination filed before July 1, 1997, the commission has delegated the investigative function to the human rights bureau of the department of labor and industry. The commission has delegated the hearing function to the hearings bureau of the department of labor and industry, which issues proposed orders made final by order of the commission.~~

AUTH: 2-15-1706 49-2-204 and 49-3-106, MCA

IMP: 2-4-201, 49-2-204 and 49-2-501 through 49-2-510, MCA

24.9.103 COMMISSION MEETINGS: QUORUM; DECISION MAKING AUTHORITY (1) (a) Remains the same.

~~(b) A majority of the membership constitutes a quorum to do business. A contested case in a case filed before July 1, 1997 may be heard before a hearing officer, an individual commissioner member of the commission acting as hearing officer, or by at least three members of the commission. The commission may designate one or more non-members to substitute for a commission member or members in the case of disqualification or other appropriate circumstances.~~

~~(c) The commission department shall appoint provide a staff member of the staff to act as secretary of the commission. The staff member will keep general minutes of all commission meetings whether in person or by telephone conference call as a public record.~~

~~(2) A single commission member may issue an order in a contested case proceeding before the commission which is of a~~

purely procedural nature. For example, a single ~~commissioner~~ member of the commission may sign an order regarding a briefing schedule, or an order extending the time in which a party may file exceptions when both parties stipulate that such may be done.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-201, 49-2-204, 49-2-205, 49-2-502, and 49-2-505, MCA

24.9.104 LIBERAL CONSTRUCTION: EFFECT OF PARTIAL INVALIDITY (1) The following rules describe the procedure followed by the human rights commission in ~~receiving, investigating, and~~ resolving complaints of discrimination.

(2) through (5) Remain the same.

(6) Where strict adherence to these rules would cause undue hardship or create a substantial injustice to a party, the commission ~~or staff~~ may modify, waive, or excuse their application. The commission ~~or staff~~ may not modify, waive, or excuse mandatory acts which are required by statute or due process of law.

(7) Parties who choose not to be represented by counsel and who represent themselves must substantially comply with the provisions of these rules, subject to the provisions of (6). The commission ~~or staff~~ may modify the strict application of these rules to an unrepresented party to the extent they are not mandatory in order to assure fundamental fairness.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-205, 49-2-501, 49-2-504, 49-2-505, 49-3-304, 49-3-305, 49-3-307 and 49-3-308, MCA

24.9.105 DEFINITIONS The following definitions apply throughout this chapter: (1) Remains the same.

(2) ~~"Administrator," "commission administrator," or "division administrator" means the executive director employed by the human rights commission who is responsible for the supervision of the commission staff.~~

~~(3) (2) "Charging party" means a person who files a complaint with the human rights bureau of the department of labor and industry (for complaints filed on or after July 1, 1997) or the human rights commission (for complaints filed before July 1, 1997) under 4-2-501, MCA.~~

~~(4) (3) "The code" means the governmental code of fair practices, Title 49, chapter 3, MCA.~~

~~(5) (4) "Commission" means the human rights commission as established by 2-15-1706, MCA.~~

~~(6) "Commissioner" means a member of the human rights commission.~~

~~(7) "Division" means the staff of the human rights commission.~~

~~(5) "Department" means the department of labor and industry.~~

~~(6) (6) "Respondent" means any person against whom a complaint is filed.~~

~~(7) (7) "Person" means a person as defined in 49-2-101(14), MCA.~~

(10) (a) "Right to sue letter" means a document which terminates the jurisdiction of the department and commission over a complaint filed before July 1, 1997 under the act or code and allows a charging party or aggrieved person to file a discrimination action in district court.

(11) ~~"Staff" or "commission staff" means the staff of the human rights commission.~~

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-101, ~~49-2-201~~, ~~49-2-501~~, 49-2-509, 49-3-101, and 49-3-312, MCA

24.9.210 AMENDMENT OF COMPLAINTS (1) A complaint may be amended to cure defects or omissions, including failure to swear or affirm that the charge is true, or to clarify and amplify allegations, to bring the charge up to date in regard to a continuing pattern of occurrences, to allege new but related matters or to allege additional facts directly relating to or growing out of the subject matter of the original complaint. A complaint may be amended at any time up to the time that the complaint is certified to the ~~commission~~ for hearing. The ~~commission~~ department shall promptly notify all parties in writing of any amendments.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-501, 49-2-503, 49-2-504 and 49-2-505, MCA

24.9.212 CONFIDENTIALITY (1) The department and commission will maintain the confidentiality of privacy interests entitled to protection by law. Any information which is made public may be altered to provide for the anonymity of persons whose privacy interests are entitled to protection by law.

(2) No complaint, information obtained in the investigation of a complaint, or other information in the ~~commission department~~ file will be made a matter of public information by the ~~commission department~~ prior to a finding under ARM 24.9.224 regarding cause to believe discrimination occurred or other agency action terminating investigation and entering an order with respect to a complaint. This rule does not limit the ~~commission's department's~~ disclosures of such information to a party, individual, or agency as may be necessary to carry out the ~~commission's department's~~ obligations under Montana statutes or these rules. The ~~commission department~~ may disclose any record or information contained in any record to any party, individual, or agency pursuant to a written request by or with the prior written consent of the individual to whom the record pertains.

(3) After a finding of reasonable cause or no reasonable cause or other agency action terminating the investigation in a case, the complaint, information obtained in the investigation of the complaint and other information in the ~~commission department~~ file which do not relate to privacy interests protected by law become public information.

(4) Disclosure of information regarding complaints alleging violations of federal law which are within the

jurisdiction of the department and human rights commission because of worksharing arrangements with federal agencies may be further restricted by provisions of federal law.

(5) Remains the same.

(6) Information which is subject to the protection of Montana's constitutional right of privacy, Article 2, Section 10, which is requested or subpoenaed under the authority of 49-2-203, MCA, or these rules will not be disclosed to any individual, agency, or party outside the department or commission, except as required by law. The commission or hearing examiner may issue appropriate protective orders.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-504, 49-2-505, 49-3-307, and 49-3-308, MCA

24.9.213 COMPLAINT: WITHDRAWAL OF COMPLAINT BY CHARGING PARTY: REDESIGNATION BY COMMISSION ADMINISTRATOR OF COMPLAINT

(1) Any person who has filed a complaint with the department or commission or any person on whose behalf a complaint has been filed may make a request in writing that the complaint be withdrawn. If the withdrawal is based on a private settlement, a copy of the settlement agreement must accompany the request.

(2) Upon receipt of a written request for withdrawal of the complaint, the commission administrator department shall dismiss the complaint either entirely or insofar as it alleges a particular cause of action in favor of the party seeking the withdrawal or seeks an individual remedy for such party.

(3) The administrator department may reserve any part of the complaint which alleges a cause of action in favor of any other person or group or may redesignate the complaint as a commission complaint with respect to any allegation or remedy which is not specific to the withdrawing party alone. Redesignation does not constitute the filing of a new complaint and relates back to the date the original complaint was filed.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-603, 49-2-504 and 49-3-307, MCA

24.9.218 COMPLAINT. COMMENCEMENT OF INVESTIGATION. MEDIATION

(1) As soon as possible after the complaint is received, it shall be assigned to ~~a member of the staff~~ for investigation. The ~~staff should~~ department may contact the charging party (and, in the case of a complaint filed on behalf of anyone, the persons alleged to be aggrieved) to ascertain the basis for the complaint and to inquire as to such additional facts and allegations as may be necessary to amend the complaint into its proper form and to make a determination whether the complaint is supported by substantial evidence. The ~~staff should~~ department may also contact the respondent to obtain the viewpoint of the respondent, to ascertain additional facts, and to assure that the respondent understands the nature of the complaint and the requirements of the law. The ~~staff department~~ may also inquire into facts to determine whether the commission has jurisdiction over the complaint.

(2) The ~~staff department~~ may undertake efforts to achieve a voluntary resolution of the case through mediation with the parties. Any settlement of a case at any stage, whether mediated by the ~~commission staff department~~ or reached by the parties independently, is subject to the provisions of ARM 24.9.226.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-603, 49-2-504, and 49-3-307, MCA

24.9.219 INVESTIGATION: POWERS OF COMMISSION STAFF

(1) The ~~staff's department's~~ investigation shall be conducted in a prompt and impartial manner. The ~~staff department~~ shall normally utilize methods such as written information requests and telephone interviews to obtain information in the course of the investigation, relying upon more formal investigative tools such as subpoenas and depositions only after attempts to achieve voluntary cooperation have been unsuccessful.

(2) The ~~commission staff department~~, in investigating a charge of discrimination under the act, may exercise any and all of the powers of the commission provided for in section 49-2-203, MCA. These include the power to subpoena witnesses, take the testimony of any person under oath, administer oaths, and require the production for examination of tangible evidence, such as documents, relating to the case. In exercising its powers, the ~~commission staff department~~ may issue subpoenas, take depositions, serve interrogatories, and require the production and disclosure of any tangible evidence.

(3) The powers of the ~~commission staff department~~ to conduct investigations are continuing from the time that a complaint is filed until the case is resolved, or a hearing on the complaint is held. The ~~commission staff department~~ may exercise its investigative powers in determining if a conciliation agreement is being honored or an order of the commission, issued after hearing, obeyed.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-203, 49-2-504, 49-2-506, 49-3-307, and 49-3-309, MCA

24.9.220 EMERGENCY ORDER (1) After a complaint is filed, if it appears that substantial and irreparable damage to any charging party or aggrieved person will occur unless prompt action is taken, ~~the administrator a member of the commission~~ may petition the district court for an injunction for appropriate relief.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-503 and 49-3-306, MCA

24.9.221 INVESTIGATION: FAILURE TO COOPERATE WITH COMMISSION STAFF INVESTIGATION

(1) If any person fails to comply with a request by the ~~commission staff department~~ for information, or fails to answer any interrogatory or question asked by deposition, or to produce any tangible evidence including any document related to a complaint under investigation by the ~~staff department~~, the ~~administrator~~

~~department~~ may issue a subpoena, subpoena duces tecum, or other appropriate order requiring the person to supply the information, answer the interrogatory, respond to the question, appear and answer questions under oath, or provide the tangible evidence. If the order of the ~~administrator~~ is not obeyed, the ~~administrator department~~ may seek a court order enforcing the order.

(2) If a respondent has been given notice of a complaint and the ~~commission-staff department~~ has requested information in the course of its investigation and respondent fails to answer the information requests within the time specified, the ~~commission-staff department~~ may take one or more of the following actions to complete its investigative responsibilities:

(a) through (c) Remain the same.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-203, 49-2-504, 49-2-505, 49-3-307 and 49-3-308, MCA

24.9.222 INVESTIGATION: FAILURE OF CHARGING PARTY OR AGGRIEVED PERSON TO COOPERATE OR KEEP THE COMMISSION DEPARTMENT ADVISED OF CHANGES IN ADDRESS

(1) Whenever any charging party or (in the case of a complaint filed on behalf of anyone) any person alleged to be aggrieved shall refuse to comply with a request by the ~~commission-staff department~~ for information or evidence reasonably necessary for the investigation, conciliation, or litigation of the complaint, the ~~administrator department~~ may dismiss the case and issue a right to sue letter for failure of the charging party (or aggrieved person) to cooperate with the ~~commission-staff department~~, or may dismiss so much of the complaint as relates to that charging party or aggrieved person.

(2) Whenever any charging party or aggrieved person fails to advise the ~~commission department~~ of a change of address and the ~~commission-staff department~~ is unable to locate the charging party or aggrieved person through reasonable efforts including a certified letter to the last address of record, the ~~administrator department~~ may dismiss the case and issue a right to sue letter or may dismiss so much of the complaint as relates to that charging party or aggrieved person.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-504, 49-2-509, 49-3-307, and 49-3-312, MCA

24.9.223 INVESTIGATION: FAILURE TO PRODUCE EVIDENCE

(1) No evidence concerning any matter which was the subject of a ~~commission-staff department~~ information request which was not fully answered by either party during the investigation of the complaint shall be admitted in any contested hearing on a complaint in support of any position taken or defense made by that party. No document or other tangible evidence requested in connection with any interrogatory or motion for disclosure and production by the ~~commission-staff department~~ which was not produced or which party denied existed or failed to disclose in response to the ~~commission-staff's department's~~ inquiry shall be admitted into evidence at any

contested hearing on a complaint in support of any position taken or defense made by that party, nor shall evidence concerning the document or tangible evidence be admitted in support of the party's case.

(2) Remains the same.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-504, 49-2-505, 49-3-307 and 49-3-308, MCA

24.9.224 INVESTIGATION: FINDING OF REASONABLE CAUSE OR NO REASONABLE CAUSE (1) At the conclusion of the investigation, the ~~staff~~ department will issue a finding of reasonable cause if the allegations of the complaint are supported by substantial evidence. The ~~staff~~ department will issue a finding of no reasonable cause if the allegations of the complaint are not supported by substantial evidence, or if the commission lacks jurisdiction over the complaint. The finding will include a brief statement of the reasons for the ~~staff's~~ department's conclusions and will be mailed to all parties.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-504 and 49-3-307, MCA

24.9.225 PROCEDURE ON FINDING OF NO REASONABLE CAUSE

(1) A finding of no reasonable cause will be accompanied either by a dismissal order and right to sue letter in accordance with ARM 24.9.263 or by a notice certifying the case for a hearing ~~before the commission~~ in accordance with ARM 24.9.230.

(2) Remains the same.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-504, 49-2-505, 49-2-509, 49-3-307, 49-3-308, and 49-3-312, MCA

24.9.226 CONCILIATION AND SETTLEMENT (1) If the ~~staff~~ department issues a reasonable cause finding, ~~it the staff~~ will attempt to resolve the case by conciliation. No statements made by any party in the course of a conciliation offer or in any oral or written discussion concerning conciliation will be admissible in any hearing held concerning the complaint. Agreement to a conciliated settlement of the case does not constitute an admission of violation of any law by the respondent.

(2) A conciliation or other settlement agreement reached by the parties ~~prior to the time the case is certified for hearing~~ must be in writing, signed by the parties, and approved by the ~~administrator~~ department. ~~A conciliation agreement or other settlement agreement reached by the parties after the case has been certified for hearing must be in writing, signed by the parties, and approved by the department and the commission.~~

(3) The ~~administrator~~ department or commission may refuse to approve a conciliation or other settlement agreement which does not resolve all allegations or remedies for all persons or groups affected by the alleged discrimination. Alternatively, the ~~administrator~~ department may treat the agreement as a withdrawal in accordance with ARM 24.9.213.

(4) A conciliation or other settlement agreement may be

enforced by the department, the commission or by any party in the same manner as a final commission order by seeking appropriate orders in the district court pursuant to 49-2-508, MCA.

(5) Remains the same.

(6) When a conciliated settlement does not appear possible following a finding of reasonable cause, the staff department shall inform all parties in writing that the conciliation period is concluded and certify the case ~~to the commission~~ for hearing.

(7) The parties must inform the department and the commission of all terms of any settlement entered into after the commission has issued a final order.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-504, 49-2-505, 49-3-307, and 49-3-308, MCA

24.9.230 CERTIFICATION OF A CASE TO COMMISSION FOR HEARING

(1) Whenever the staff department has issued a finding of reasonable cause and conciliation efforts have been unsuccessful, the administrator department shall ~~notify the commission of the failure of conciliation and~~ certify the case for hearing. In any other case, if the administrator department determines that a hearing on a complaint is necessary as a matter of fundamental fairness, or in the public interest, the administrator department may ~~notify the commission and~~ certify the case for hearing.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-505, 49-2-506, 49-3-308 and 49-3-312, MCA

24.9.231 NOTICE OF CERTIFICATION FOR HEARING

(1) Notice that a case has been certified ~~to the commission~~ for hearing shall include:

(a) A statement indicating that the case has been certified ~~to the commission~~ for hearing;

(b) A statement indicating that the ~~commission or~~ hearing examiner will set a time and place for hearing, and that the hearing will be held in the county where the discriminatory practice is alleged to have occurred, unless the respondent, the department or the commission requests a change of venue for good cause;

(c) through (g) Remain the same.

(2) The administrator department shall notify the parties of the certification for hearing.

(3) Notice that a complaint has been certified ~~to the commission~~ for hearing and the copy of the complaint shall be served on all parties in the manner provided in Rule 4D of the Montana Rules of Civil Procedure, Title 25, Chapter 20, MCA.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-505, 49-3-308 and 49-3-312, MCA

24.9.261 DISMISSAL OF COMPLAINT ALSO PENDING IN COURT

(1) At any time after a complaint is filed, any party to the complaint, or the ~~commission-staff department~~, may move the commission to dismiss the complaint on the grounds that the issues therein are also before a court of competent

jurisdiction, either state or federal. The commission may dismiss the complaint without prejudice if it finds that the parties and issues before the commission are also before a court of competent jurisdiction, and that the court's decision will be determinative of the issues before the commission.

(2) If the court later finds that it does not have jurisdiction over the above described parties or issues, then the charging party or ~~commission staff department~~ may apply to reopen the complaint before the commission.

AUTH: ~~2-15-1706~~ 49-2-204 and 49-3-106, MCA

IMP: 49-2-204, 49-2-501, and 49-2-505, MCA

24.9.262A ISSUANCE OF RIGHT TO SUE LETTER WHEN REQUESTED BY A PARTY (1) At the request of any party to a case before the commission, other than a case alleging a violation of 49-2-305, MCA (housing discrimination), the ~~administrator department~~ shall issue a right to sue letter if the commission has not yet held a contested case hearing and 12 months have elapsed since the complaint was filed, unless:

(a) through (c) Remain the same.

(d) the party requesting the issuance of a right to sue letter has unsuccessfully attempted through court litigation to prevent the ~~commission staff department~~ from investigating the complaint.

~~(2) At the request of a party to a case before the commission, other than a case alleging violation of 49-2-305, MCA (housing discrimination), the administrator may issue a right to sue letter if the administrator determines that the commission will not hold a contested case hearing within 12 months after the filing of the complaint and that the interests of fundamental fairness or the public interest support the issuance of the right to sue letter. The denial of a request for issuance of a right to sue letter under this section is not subject to commission review under (3).~~

~~(3) (2)~~ A party who requests issuance of a right to sue letter and is dissatisfied with a decision of the ~~administrator department~~ refusing to issue a right to sue letter under (1) may seek commission review of the decision by filing or mailing written objections within 14 days after the decision is served. The date of mailing will be established by U. S. postal service postmark. Briefs are not required. A party who files such an objection and wishes to file a supporting brief must file and serve an original and six copies of the brief within five days of filing or mailing the objection. Any opposing party who wishes to file an answer brief must file and serve an original and six copies of the brief within ten days of service of the initial brief. A party making an objection who wishes to file a reply brief must file and serve an original and six copies of the brief within ten days of service of an answer brief. If a party making an objection does not file a supporting brief, any opposing party may request permission from the ~~commission department~~ to file a brief in opposition to the objection. The objection will be considered at the next commission meeting after conclusion of the briefing schedule. Consideration of the

objection will be based upon the written record unless oral argument is requested and authorized by the commission.

(4) (3) Briefs on objections to the ~~administrator's~~ department's failure to issue a right to sue letter may not exceed ten pages in length. Each party should provide copies of any specific exhibits from the record which the party deems essential for the commission to read. Requests for oral argument must be made in writing at the time of filing the first brief of each party. If the request is contained in a brief, the caption should indicate that oral argument is requested. If a request for oral argument is timely made, ten minutes for each party will be reserved for oral argument during the commission meeting at which the objection will be considered.

(5) (4) If the commission sustains the objections to the refusal to issue a right to sue letter, it will direct the ~~administrator~~ department to issue a right to sue letter.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-509 and 49-3-312, MCA

24.9.263 CONTENTS OF RIGHT TO SUE LETTER (1) This ~~section rule~~ applies when the ~~administrator~~ department issues a right to sue letter pursuant to ARM 24.9.222, 24.9.225, or 24.9.262A.

(2) Each right to sue letter issued by the ~~commission~~ staff department shall be issued to the charging party and shall set forth the following information:

(a) through (e) Remain the same.

(3) and (4) Remain the same.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-509 and 49-3-312, MCA

24.9.264 EFFECT OF ISSUANCE OF RIGHT TO SUE LETTER

(1) Remains the same.

(2) A party who is dissatisfied with a decision to issue a right to sue letter may seek commission review of the decision by filing or mailing a written objection within 14 days after the decision is served. The date of mailing will be established by U. S. postal service postmark. Briefs are not required. A party who makes an objection and wishes to file a supporting brief must file and serve an original and six copies of the brief within five days of filing or mailing the objection. Any opposing party who wishes to file an answer brief must file and serve an original and six copies of the brief within ten days of service of the initial brief. A party making an objection who wishes to file a reply brief must file and serve an original and six copies of the brief within ten days of service of an answer brief. If a party making an objection does not file a supporting brief, any opposing party may request permission from the ~~commission~~ department to file a brief in opposition to the objection. The objection will be considered at the next commission meeting after conclusion of the briefing schedule. Consideration of the objection will be based upon the written record unless oral argument is requested and authorized by the commission.

(3) Remains the same.

(4) If the commission sustains the objections to the issuance of a right to sue letter, it will reopen the case before the commission by remanding the case to the ~~staff department~~ for further investigation or to be certified for hearing.

(5) and (6) Remain the same.

AUTH: 49-2-204 ~~and~~ 49-3-106, MCA

IMP: 49-2-509 ~~and~~ 49-3-312, MCA

24.9.301 PURPOSE AND SCOPE OF RULES (1) ARM 24.9.301 through 24.9.331 contain rules of procedure for contested case proceedings before the human rights commission for all complaints filed before July 1, 1997.

(2) and (3) Remain the same.

AUTH: 49-2-204 ~~and~~ 49-3-106, MCA

IMP: 49-2-505 ~~and~~ 49-3-308, MCA

24.9.302 DEFINITIONS RELATING TO CONTESTED CASES ~~(1)~~ The ~~As used in this sub-chapter, the~~ following definitions apply to terms contained in these rules:

~~(a) "Administrator" or "division administrator" means the administrator of the human rights division of the Montana department of labor and industry.~~

~~(b) "Charging party" means any person who files a complaint with the human rights commission under statutes providing for the filing of such complaints.~~

~~(c) "Commission" means the human rights commission, a quasi-judicial board established by section 2-15-1706, MCA.~~

~~(d) "Commissioner" means a member of the human rights commission.~~

~~(e) (1) "Contested case" means a proceeding before the commission to determine the legal rights, duties, or privileges of a party following an opportunity for hearing. Contested case proceedings commence only following the completion of investigation by the commission staff department and, in cases in which the staff department finds that the allegations of the complaint are supported by substantial evidence ("reasonable cause"), following the conclusion of the staff's department's efforts to resolve the complaint and eliminate the discriminatory practice through conference, conciliation, and persuasion.~~

~~(f) "Division" means the human rights division of the department of labor and industry, which is the staff of the human rights commission.~~

~~(g) (2) "Ex parte consultation" means the act of a party to a contested case, any member of the division employee of the department, any person having an interest in the outcome of a contested case or any other person not authorized by law, communicating with a hearing examiner, commissioner or or member of the commission regarding the merits of any contested case. Communications which do not constitute discussions or information regarding an issue of fact or law in a contested case, such as discussions of enlargements of time, scheduling, administrative matters or questions of procedure do not~~

constitute ex parte communications.

~~(h)~~ (3) "Hearing examiner" means an individual appointed by the hearings bureau of the department of labor and industry to preside over contested case hearings and to make proposed orders for consideration by the commission. That individual may be either a person assigned with due regard for his or her expertise or a ~~commissioner member of the commission~~ acting in that capacity. When the term is used in these rules, it also refers to the chair of the commission or a presiding officer for purposes of contested case hearings conducted before the commission, sitting as a body.

~~(i)~~ (4) "Person" includes natural persons, individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated entities, employers, employees, employment agencies, labor organizations, and such other natural persons or entities, including artificial persons, possessing such status as a matter of law. The definition includes any group, organization, entity or natural person who is "aggrieved" within the meaning of ARM 24.9.204.

~~(j)~~ "Staff" or "commission staff" means the human rights division, which is the staff of the human rights commission.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-611, 2-15-1706, 49-2-101, 49-2-201, 49-2-505, 49-3-101 and 49-3-308, MCA

24.9.303 JURISDICTION TO CONSIDER JURISDICTION (1) The commission and ~~the department's~~ hearing examiners shall, at all times, have jurisdiction to determine the jurisdiction of the commission over any particular contested case. In such situations the rules of procedure of the commission shall apply, and questions of jurisdiction may be resolved by rulings and orders based upon the pleadings or after a hearing, as required to suit the circumstances of the case.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-505 and 49-3-308, MCA

24.9.304 INCORPORATION OF OTHER PROCEDURAL RULES BY REFERENCE (1) To the extent these rules do not provide for or specify procedures, or where necessary to supplement these rules, the department and commission may apply the provisions of the Montana Administrative Procedure Act, Montana Rules of Civil Procedure, Montana Uniform District Court Rules or Montana Rules of Evidence. Those procedural provisions are applicable to the extent they may clarify fair procedures, expedite determinations, and assist in the adjudication of rights, duties or privileges of parties before the commission.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-612, 49-2-505 and 49-3-308, MCA

24.9.305 PRESENTATION OF A CASE IN SUPPORT OF A COMPLAINT

(1) All parties before the commission have the right to be represented by an attorney of their choice. ~~Except as provided in subsections (2), (3), and (4), Except as provided in ARM~~

24.9.1507. the commission will not provide counsel for parties or provide funds for the payment of counsel or legal representation.

~~(2) The division may assign an attorney for the presentation of a case in support of a complaint or to appear in any contested case to represent the interests of the commission or the public. In such situations the case is prosecuted in the name of the division upon the relation of a charging party, and the administrator controls the conduct of the case and instructs any attorney assigned to present the case or represent the interests of the commission or the public. The relationship between such an attorney and a party is limited to the attorney and client privilege.~~

~~(3) The administrator will assign counsel to present a case or appear in a proceeding only in limited situations, including those in which the assignment is in the interest of the commission, the state and the public, such as when the issues posed by the case are significant, when a charging party has withdrawn and the administrator has chosen to proceed upon the complaint in accordance with ARM 24.9.213 or when the appearance is deemed necessary in the discretion of the administrator. The division will not present a case in support of a complaint as to any issue upon which it has made a finding of lack of reasonable cause.~~

~~(4) (2) The division department may appear in any contested case for limited or special purposes to represent the interests of the commission or the public.~~

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-505, 49-2-510 and 49-3-308, MCA

24.9.306 APPOINTMENT AND AUTHORITY OF HEARING EXAMINER

(1) Contested cases will be presided over and heard by a hearing examiner, who may be an individual appointed by the hearings bureau of the department of labor and industry, any individual appointed by the commission or may be an individual commissioner member of the commission.

(2) through (5) Remain the same.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-611, 49-2-505 and 49-3-308, MCA

24.9.307 DISQUALIFICATION OF A HEARING EXAMINER OR COMMISSIONER MEMBER OF THE COMMISSION (1) through (4) Remain the same.

(5) A party may disqualify a commissioner member of the commission from participating in a matter before the commission upon the same grounds and with the same procedure as that for the disqualification of a hearing examiner. A party seeking to disqualify a commissioner member of the commission must file a motion and affidavit of disqualification with the commission not less than ten days prior to the date fixed for a hearing or proceeding before the commission. The question of disqualification shall be determined by a quorum of the commission, which may include the commissioner member of the commission to be disqualified if his or her participation is

required to constitute a quorum or decide the matter.

(6) A hearing examiner or ~~commissioner member of the commission~~ may make an order or give a notice of recusal or self-disqualification at any time.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-611, 49-2-505 and 49-3-308, MCA

24.9.308 EX PARTE CONSULTATIONS (1) No hearing examiner or ~~commissioner member of the commission~~ may participate in or initiate any ex parte consultation on the merits of a matter with any party or the ~~commission-staff department~~. A hearing examiner or ~~commissioner member of the commission~~ may engage in a communication concerning administrative or procedural matters where they are necessary under the circumstances and do not adversely affect the substantial rights of a party.

(2) The commission or a hearing examiner may consult with any person or the ~~commission-staff department~~ regarding the interpretation of a point of law.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-613, 49-2-505 and 49-3-308, MCA

24.9.309 CONTESTED CASE RECORD (1) The record in a contested case shall include:

(a) through (f) Remain the same.

(g) All ~~staff department~~ memoranda or data submitted to the hearing examiner or members of the commission as evidence in connection with their consideration of the case.

(2) and (3) Remain the same.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-614, 49-2-505 and 49-3-308, MCA

24.9.312 INFORMAL PROCEEDINGS (1) and (2) Remain the same.

(a) Written or oral evidence in opposition to the ~~commission department~~ determination of the sufficiency of evidence in support of a complaint, or other ~~commission department~~ action;

(b) A written statement challenging the grounds upon which the ~~commission-staff department~~ or the commission has chosen to justify its action or inaction; or

(c) Remains the same.

(3) Remains the same.

(4) The hearing examiner may receive the ~~commission-staff department~~ record or investigative file in evidence in informal proceedings, subject to objections or requests to strike hearsay evidence or other evidence not permitted under ~~subsection~~ (3).

(5) Remains the same.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-604, 49-2-505 and 49-3-308, MCA

24.9.313 INFORMAL DISPOSITION (1) Remains the same.

(2) Where a charging party seeks to withdraw a complaint and the only issue remaining to resolve a contested case is the nature, scope and extent of affirmative relief to protect public interests, the ~~commission-staff administrator department~~ may

request informal disposition of a contested case to grant such relief in a proposed order.

(3) Remains the same.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-604, 49-2-505 and 49-3-308, MCA

24.9.314 DOCUMENT FORMAT, FILING AND SERVICE (1) Remains the same.

(2) The place of filing is the offices of the ~~commission at Suite 302, 616 Helena Avenue, Hearings Bureau, Department of Labor and Industry~~, P.O. Box 1728, Helena, Montana 59624-1728.

(3) Filing with the commission is effective upon actual receipt at the offices of the ~~commission department~~ and not upon mailing.

(4) through (7) Remain the same.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-106, 49-2-505 and 49-3-308, MCA

24.9.315 TIME (1) In computing any period of time for acts required by any of the commission's rules, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, legal holiday, or the ~~commission department~~ offices are closed on such day. In that event, the period runs until the end of the next day when the ~~commission department~~ offices are open which is not one of the aforementioned days. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in computation. A half holiday will be considered as other days and not as a holiday.

(2) and (3) Remain the same.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-505 and 49-3-308, MCA

24.9.317 APPEARANCE, DISMISSAL AND DEFAULT

(1) through (6) Remain the same.

(7) Upon entry of an order of dismissal of a complaint, where the ~~division department~~ has made a reasonable cause determination, the commission or hearing examiner shall notify the ~~administrator department~~ of the proposed dismissal of the case to permit the ~~administrator department~~ to present the case in support of the complaint and obtain the entry of orders of appropriate affirmative relief.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-106, 2-4-603, 49-2-505 and 49-3-308, MCA

24.9.321 EVIDENCE (1) and (2) Remain the same.

(3) The hearing examiner or the commission may take notice of judicially or officially cognizable facts and of generally recognized technical or scientific facts within the ~~department's~~ or commission's specialized knowledge. Such facts or knowledge may be obtained from treatises of learned scholars and public

documents to the extent allowed by the rules of evidence. The ~~department~~ or commission shall notify parties of materials noticed and give them an opportunity to contest or comment upon them.

(4) Remains the same.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-603, 2-4-604, 2-4-612, 49-2-505 and 49-3-308, MCA

24.9.323 AMENDMENT OF COMPLAINT (1) and (2) Remain the same.

(3) Complaints filed by ~~the commission or its staff the department on behalf of the commission~~ shall not, unless so specified, constitute the filing of a new complaint but shall relate to the underlying complaint in a contested case as an amendment to it. The ~~commission-staff department~~ may file a complaint or seek to amend a complaint to allege a discriminatory practice at any time.

(4) through (6) Remain the same.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-501, 49-2-505, 49-3-304 and 49-3-308, MCA

24.9.324 PREHEARING CONFERENCES AND ORDERS (1) Remains the same.

(2) The commission may direct a hearing officer, hearing examiner or ~~commissioner member of the commission~~ to conduct a prehearing conference and prepare or approve a prehearing order in any contested case or other matter which may be heard before the commission. The commission may also require a prehearing conference in situations involving numerous parties, complex issues of fact or law or a lengthy record for the purpose of simplifying issues or assisting the commission in making its determinations and orders.

(3) through (6) Remain the same.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-505 and 49-3-308, MCA

24.9.329 EXCEPTIONS TO PROPOSED ORDERS (1) Remains the same.

(a) Once a proposed order is entered in a contested case, all parties shall thereafter submit an original or original copy and six copies of all submissions for the record unless otherwise directed by the commission. The ~~commission-staff department~~ may reject and return any submission which does not include the required number of copies.

(2) through (10) Remain the same.

(11) The commission may appoint a ~~commissioner member of the commission~~ or hearing examiner for the purpose of conducting a prehearing conference prior to commission consideration of exceptions.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-621, 2-4-623, 49-2-505 and 49-3-308, MCA

24.9.330 COMMISSION HEARINGS TO CONSIDER EXCEPTIONS

(1) Remains the same.

(2) Any ~~commissioner~~ member of the commission who is absent at the presentation of oral argument may participate in deliberations and the entry of a final decision or order of the commission in a contested case if he or she, where required, reviews the complete record of the contested case, including a recording or transcript of the oral argument of the parties.

(3) At the time of oral argument, and subject to the rule of the commission chair, any ~~commissioner~~ member of the commission may pose questions to a party, his or her representatives.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-621, 2-4-623, 49-2-505 and 49-3-308, MCA

24.9.401 PURPOSE AND SCOPE OF RULES (1) and (2) Remain the same.

(3) A petition for a declaratory ruling is the sole method of obtaining a binding determination of legal rights, duties, or privileges from the commission ~~or its staff~~ other than by a determination of such matters by means of a contested case hearing. While opinions of the ~~staff of the commission department~~ carry persuasive weight, only judicial determinations, contested case and declaratory ruling decisions, and the rules of the commission are binding upon the commission.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-501, ~~49-2-401, 49-3-105~~ 49-2-204 and 49-3-106, MCA

24.9.404 FILING AND DOCKETING FOR HEARING (1) Petitions for declaratory rulings must be filed at the offices of the ~~Human Rights Commission, Suite 302, 616 Helena Avenue, Human Rights Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624-1728.~~

(2) Petitions for declaratory rulings may be heard by the full commission, by a single ~~commissioner~~ member of the commission, or by a hearing examiner appointed by the commission.

(3) Upon the filing of a petition for a declaratory ruling the ~~administrator department~~ shall review the sufficiency of the petition for compliance with ARM 24.9.403, the standing of the petitioner, the existence of a genuine case or controversy, the availability of other adequate remedies at law, subject matter jurisdiction, multiplicity of proceedings, lack of a substantial legal question or other defects apparent on the face of the petition.

(4) If it appears the petition is adequate as a matter of law and there are reasonable grounds for it to be heard, the ~~administrator department~~ shall assign the petition to a hearing examiner for hearing or set the matter for hearing before the commission. If the petition is defective as a matter of law or there are no reasonable grounds for it to be heard, the ~~administrator department~~ shall present the petition to the commission for its consideration.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-501, ~~49-2-401~~, ~~49-3-105~~ 49-2-204 and 49-3-106, MCA

24.9.405 APPOINTMENT OF HEARING EXAMINER AND AUTHORITY

(1) A hearing examiner or ~~commissioner~~ member of the commission assigned to preside over petitions for declaratory rulings and hearings upon them shall have those powers and that authority contained in ARM 24.9.306.

(2) and (3) Remain the same.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-501, ~~49-2-401~~, ~~49-3-105~~, ~~2-4-611~~ 49-2-204 and 49-3-106, MCA

24.9.406 NOTICE (1) The ~~administrator~~ department shall notify interested parties and the public of the petition for a declaratory ruling, the date of the prehearing conference regarding the petition, and the hearing of the petition. The ~~administrator~~ department may require the petitioner to prepare the notice and serve it as required by this rule.

(2) through (2)(e) Remain the same.

(3) The petitioner shall notify the interested or affected parties identified in the petition and any other interested or affected parties identified by the ~~administrator~~ department of the petition. The petitioner shall give notice by serving a copy of the notice of hearing and the petition, by first class mail.

(4) The ~~commission staff~~ department shall notify the public of the petition through news releases issued by the ~~administrator~~ department, which describe the petition, advise of the prehearing and hearing dates and explain how interested parties may intervene or participate in proceedings.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-501, ~~49-2-401~~, ~~49-3-105~~ 49-2-204 and 49-3-106, MCA

24.9.407 PARTIES (1) and (2) Remain the same.

(3) The ~~staff of the commission~~ department may intervene and participate in proceedings for a declaratory ruling as a party, or for limited purposes, to represent the interests of the commission or the public.

(4) The ~~staff of the commission~~ department may identify any party who may have an interest in the outcome of declaratory ruling proceedings and notify the party of the petition for a declaratory ruling.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-501, ~~49-2-401~~, ~~49-3-105~~ 49-2-204 and 49-3-106, MCA

24.9.409 PREHEARING CONFERENCES (1) Upon appointment to preside over a petition for a declaratory ruling, a ~~commissioner~~ member of the commission or the hearing examiner will fix the dates for a prehearing conference and hearing.

(2) and (3) Remain the same.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-501, ~~49-2-401~~, ~~49-3-105~~ 49-2-204 and 49-3-106, MCA

24.9.601 PURPOSE OF THESE RULES REGARDING PROOF OF UNLAWFUL DISCRIMINATION (1) These rules regarding proof of unlawful discrimination are intended to provide general statements of what must be proved to establish unlawful discrimination in various kinds of complaints. They are not intended to be exhaustive statements of the applicable law, but general guidelines and informational summaries of the law. Practitioners appearing in cases before the department or commission should also refer to the statutes, the balance of the commission's rules, the department's rules, and the federal, state, and commission and department decisions addressing the issues in their particular cases.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-301 through 49-2-404, 49-3-103, 49-3-104, and 49-3-201 through 49-3-209, MCA

24.9.603 RETALIATION AND COERCION PROHIBITED

(1) and (2) Remain the same.

(3) When a respondent or agent of a respondent has actual or constructive knowledge that proceedings are or have been pending with the department, with the commission or in court to enforce a provision of the act or code, significant adverse action taken by respondent or the agent of respondent against a charging party or complainant while the proceedings were pending or within six months following the final resolution of the proceedings will create a disputable presumption that the adverse action was in retaliation for protected activity.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-301 and 49-3-209, MCA

24.9.607 PROHIBITED MEDICAL EXAMINATIONS AND INQUIRIES-- EMPLOYMENT DISCRIMINATION BASED ON DISABILITY (1) through (3) Remain the same.

(4) and (5) Remain the same.

(6) An employer, after a conditional offer of employment to a prospective employee, may inquire whether the prospective employee is certified or eligible to be certified as vocationally handicapped disabled for the purposes of the subsequent injury fund, pursuant to Title 39, chapter 71, part 9 of the Montana Workers' Compensation Act.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-303, 49-3-201 and 49-3-202, MCA

24.9.1406 PRE-EMPLOYMENT INQUIRIES (1) Any pre-employment inquiry made in connection with prospective employment which elicits information regarding race, color, national origin, religion, creed, physical or mental handicap disability, age, sex, marital status or, in the case of government employment, political beliefs, shall raise a suspicion of intent to unlawfully discriminate except when:

(a) and (b) Remain the same.

(c) in the case of an inquiry concerning age, physical or mental handicap disability, marital status or sex, the reasonable demands

of the position (bona fide occupational qualifications) require an age, physical or mental ~~handicap disability~~, marital status or sex distinction.

(2) Remains the same.

(a) General inquiry regarding race, color, national origin, religion, creed, physical or mental ~~handicap disability~~, age, sex or marital status and, in the case of governmental employers only, political beliefs.

(b) through (i) Remain the same.

(j) General inquiry regarding membership in organizations. It is lawful to inquire regarding membership in organizations the names of which do not indicate race, color, national origin, religion, creed, physical or mental ~~handicap disability~~, age, sex or marital status. Additionally, government employers should not inquire regarding membership in organizations the names of which indicate political beliefs.

(k) through (q) Remain the same.

(4) Remains the same.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-303 and 49-3-201, MCA

24.9.1407 ADOPTION OF EEOC SEX DISCRIMINATION GUIDELINES

(1) The human rights commission hereby affirms its adoption of the Guidelines on Sex Discrimination promulgated by the United States equal employment opportunity commission, as last ~~amended and reissued on November 10, 1980 revised as of July 1, 1998~~. The guidelines are codified as Title 29 CFR, chapter XIV, part 1604, ~~sections 1604.1 through 1604.11, as amended including the appendix~~. A copy of the guidelines may be obtained from the ~~Montana human rights commission human rights bureau, department of labor and industry~~.

AUTH: ~~2-15-1706 49-2-204 and 49-3-106, MCA~~

IMP: 49-2-303, 49-2-401 and 49-2-102, MCA

24.9.1408 ADOPTION OF EEOC RELIGIOUS DISCRIMINATION GUIDELINES (1) The human rights commission hereby affirms its adoption of the Guidelines on Religious Discrimination promulgated by the United States equal employment opportunity commission, as ~~adopted September 10, 1967, effective immediately last revised as of July 1, 1998~~. The guidelines are codified and ~~published in the Federal Register~~ as Title 29 CFR, chapter XIV, part 1605, ~~section 1605.1 including the appendix~~. A copy of the guidelines ~~is on file with the secretary of state's office or~~ may be obtained from the ~~Montana human rights commission human rights bureau, department of labor and industry~~.

AUTH: ~~2-15-1706 49-2-204 and 49-3-106, MCA~~

IMP: 49-2-303, 49-2-401 and 49-2-102, MCA

24.9.1409 ADOPTION OF EEOC NATIONAL ORIGIN DISCRIMINATION GUIDELINES (1) The human rights commission hereby affirms its adoption of the Guidelines on National Origin Discrimination promulgated by the United States equal employment opportunity commission, as ~~codified, published, and made effective January~~

13, 1970, and as most recently amended, effective March 18, 1974 last revised as of July 1, 1998. The guidelines are codified and published in the Federal Register as Title 29 CFR, chapter XIV, part 1606, section 1606.1. A copy of the guidelines is on file with the secretary of state's office or may be obtained from the Montana human rights commission human rights bureau, department of labor and industry.

AUTH: 2-15-1706 49-2-204 and 49-3-106, MCA

IMP: 49-2-102, 49-2-203 and 49-2-401, MCA

24.9.1410 ADOPTION OF EEOC GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1) The human rights commission hereby affirms its adoption of the Uniform Guidelines on Employee Selection Procedures, including their appendix, "Policy Statement on Affirmative Action" promulgated by the United States equal employment opportunity commission as last revised as of July 1, 1998. The guidelines are last codified and published in the Federal Register as Title 29 CFR, chapter XIV, part 1607, volume 43, Federal Register No. 166 including the appendix. A copy of the guidelines is on file with the secretary of state's office or may be obtained from the Montana human rights commission human rights bureau, department of labor and industry.

AUTH: 2-15-1706 49-2-204 and 49-3-106, MCA

IMP: 49-2-102, 49-2-303 and 49-2-401, MCA

24.9.1412 ADOPTION OF EEOC AFFIRMATIVE ACTION GUIDELINES (1) The human rights commission hereby affirms its adoption of the Affirmative Action Guidelines promulgated by the United States equal employment opportunity commission as last codified January 19, 1979 last revised as of July 1, 1998. The guidelines are codified and published in the Federal Register as Title 29 CFR, chapter XIV, part 1608, 44 Federal Register No. 14. A copy of the guidelines is on file with the secretary of state's office or may be obtained from the human rights commission human rights bureau, department of labor and industry.

AUTH: 2-15-1706 49-2-204 and 49-3-106, MCA

IMP: 49-2-303, MCA

24.9.1501 PURPOSE AND SCOPE OF RULES (1) The following rules describe the procedures and definitions followed by the human rights department and commission in receiving, investigating and resolving complaints of housing discrimination filed before July 1, 1997. Except as otherwise provided in this sub-chapter, ARM 24.9.101 through 24.9.331 also apply to the procedure for housing complaints.

AUTH: 49-2-204, MCA

IMP: 49-2-305 and 49-2-510, MCA

24.9.1502 DEFINITIONS

(1) and (2) Remain the same.

(3) "Housing for older persons" - The determination as to whether housing under any state or federal program is

specifically designed and operated to assist elderly persons shall be made by the ~~human rights department~~, commission or the United States department of housing and urban development.

AUTH: 49-2-204, MCA

IMP: 49-2-305, MCA

24.9.1503 EXEMPTIONS (1) Remains the same.

(2) Lawful age or ~~handicap disability~~ discrimination in housing under 49-2-403, MCA based upon capacity to make or be bound by contracts or other obligations must be legally justified by current legal standards regarding capacity to make or be bound by contracts.

(3) Remains the same.

AUTH: 49-2-204, MCA

IMP: 49-2-305 and 49-2-403, MCA

24.9.1506 CONCILIATION (1) A conciliation agreement shall be a written agreement between the respondent and the complainant, and shall be subject to approval of the ~~commission staff administrator department~~ on behalf of the commission.

(2) Conciliation agreements shall be made public unless the charging party and the respondent otherwise agree and the ~~department or~~ commission determines that the agreement involves a privacy interest entitled to protection by law.

AUTH: 49-2-204, MCA

IMP: 49-2-305 and 49-2-510, MCA

24.9.1507 REPRESENTATION OF CHARGING PARTY (1) In any case in which the ~~commission staff department~~ has determined after investigation that there is substantial evidence that a discriminatory housing practice has occurred (reasonable cause finding), ~~the commission staff~~ it shall provide representation for the charging party in any contested case hearing ~~before the commission~~ unless the charging party waives the representation.

AUTH: 49-2-204, MCA

IMP: 49-2-305 and 49-2-510, MCA

24.9.1508 FINAL DISPOSITION (1) The ~~department and~~ commission shall make a final administrative disposition of a complaint alleging a discriminatory housing practice within one year after the complaint is filed unless it is impracticable to do so. If the ~~department and~~ commission ~~is are~~ unable to make a final administrative disposition within one year, ~~the department~~ shall notify the charging party and respondent in writing of the reasons for not doing so.

AUTH: 49-2-204, MCA

IMP: 49-2-305 and 49-2-510, MCA

Reason: There is reasonable necessity to make technical amendments to the existing rules to implement the provisions of sec. 17, Chap. 467, L. of 1997, which transferred the staff of the Commission to the Department of Labor and Industry. The technical changes for the most part change the terminology from "commission" or "commission staff" to "department", in order to

correctly identify that certain functions or responsibilities are handled by the Department of Labor and Industry, rather than by a Commission member or a staff member under the direct control of the Commission. Other technical changes include identifying a person who serves on the Montana Human Rights Commission as a "member of the commission" rather than as a "commissioner", in order to make clear the distinction between members of the Montana Human Rights Commission and the director of the Department of Labor and Industry, who is referred to as "the commissioner" by the provisions of Chap. 467, L. of 1997. There are also technical changes in some of the authorization and implementation citations in order to conform with style guidelines of the Secretary of State, Administrative Rule Bureau, and also to correct or complete some citations.

In addition, there is reasonable necessity to amend ARM 24.9.607, 24.9.1406 and 24.9.1503 to change the words "handicap" or "handicapped" to "disability" in order to implement the provisions of Chap. 472, L. of 1997, which changed the terminology used in Montana statutes.

There is also reasonable necessity to amend ARM 24.9.101 to differentiate between the Commission's responsibilities with respect to "old law" cases and its responsibilities with respect to "new law" cases, so as to implement the substantive provisions of Chap. 467, L. of 1997. There is also reasonable necessity to amend ARM 24.9.101, 24.9.102 and 24.9.1501 to reflect the role of the Department in cases involving complaints filed before July 1, 1997, so as to implement the substantive provisions of Chap. 467, L. of 1997. There is reasonable necessity to amend ARM 24.9.103 to reflect who may hear a contested case involving a complaint filed before July 1, 1997, so as to implement the substantive provisions of Chap. 467, L. of 1997.

There is reasonable necessity to amend ARM 24.9.105 and 24.9.302 to make the terms defined by the rules be consistent with the roles of the Commission and the Department with respect to "old law" and "new law" cases and with current terminology, so as to implement the substantive provisions of Chap. 467, L. of 1997.

There is also reasonable necessity to amend ARM 24.9.262A(2) in order to delete a reference to a process regarding requests to the former administrator of the Commission staff for issuance of a "right to sue" letter, so as to implement the provisions of sec. 17, Chap. 467, L. of 1997 (transfer of staff). There also is reasonable necessity to amend ARM 24.9.305 to delete references to actions that the former administrator of the Commission staff could take with respect to contested cases, so as to implement the substantive and procedural provisions of Chap. 467, L. of 1997.

There is reasonable necessity to amend ARM 24.9.1407, 24.9.1408, 24.9.1409, 24.9.1410 and 24.9.1412 in order to update references

to EEOC guidelines. The amendments are reasonably necessary so that Montana employers, employees and residents will not be unduly subjected to different guidelines or interpretations of law under federal requirements, on the one hand, and state requirements, on the other hand.

6. The use of the phrase "remains the same" is encouraged by the Secretary of State in order to improve readability by highlighting the proposed changes in a rule and also to lower the cost of rulemaking. Any person wishing to obtain the full text of any Department rule proposed for amendment or repeal in this Notice may do so by contacting Jerry Keck (identified in paragraph 2, above), identifying the rule(s) sought, and requesting a copy.

7. The Montana Human Rights Commission proposes to repeal the following rules in their entirety. The rules proposed for repeal are identified by the rule number, the catchline for the rule, the statute(s) that authorize and the statute(s) that the rule had implemented. In addition, the page number(s) where the rule can be found in the Administrative Rules of Montana is identified. Any person wishing to obtain a complete copy of any rule proposed for repeal should contact the person listed in paragraph 2 and request a copy of the rule or rules desired.

24.9.204 COMPLAINT: WHO MAY FILE. TIMELINESS

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-501, 49-3-304, MCA
page 24-363

24.9.205 COMPLAINT: FILING CHARGE ON BEHALF OF AN AGGRIEVED PERSON

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-501, 49-3-304, MCA
page 24-363.1

24.9.206 COMMISSION STAFF COMPLAINTS; CLASS ACTIONS BY INDIVIDUALS OR GROUPS

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-501, 49-2-505, 49-3-304, 49-3-308, MCA
page 24-363.1

24.9.207 COMPLAINT: DATE OF FILING

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-501, 49-3-304, MCA
page 24-364

24.9.208 COMPLAINT: CONTENTS

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-501, 49-3-305, MCA
page 24-364

24.9.209 COMPLAINT: PLACE AND MANNER OF FILING,
INSUFFICIENCY, EFFECTIVE DATE OF AMENDMENTS

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-501, 49-3-304, 49-3-305, MCA
page 24-364

24.9.216 NOTICE OF FILING OF COMPLAINT

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-204, 49-3-307, MCA
page 24-367

24.9.1504 COMPLAINTS AND ANSWERS

AUTH: 49-2-204, MCA
IMP: 49-2-305, 49-2-510, MCA
page 24-551

24.9.1505 INVESTIGATION

AUTH: 49-2-204, MCA
IMP: 49-2-305, 49-2-510, MCA
page 24-553

Reason: There is reasonable necessity to repeal ARM 24.9.204 through 24.9.209 and 24.9.216 because the rules refer to procedures used in the filing of complaints prior to July 1, 1997. Because all of the complaints filed before July 1, 1997, have completed these procedures, the rules are no longer needed. There is also reasonable necessity to repeal ARM 24.9.1504 and 24.9.1505, which also refer to filing and initial investigation of "old law" complaints filed prior to July 1, 1997. The repeals all implement the substantive provisions of Chap. 467, L. of 1997.

8. Interested parties may submit their data, views, or comments, either orally or in writing, at the hearing. Written data, views, or comments may also be submitted to:

Gloria "Patt" Etchert
Montana Human Rights Commission
Attn: Rules committee
P.O. Box 1728
Helena, Montana 59624-1728

so that they are received by not later than 5:00 p.m., August 17, 1998.

9. At its next regular meeting following the public hearing, the Montana Human Rights Commission will meet to discuss the public comments made and take final action on the proposed amendments, adoptions, and repeals. The public is welcome to observe the deliberations of Commission; however, no public comment regarding the proposed amendments, adoptions and repeals will be accepted at the meeting. The Montana Human Rights Commission will hold its regular meeting at 616 Helena Avenue, Suite 302, Helena, Montana; however, a date and time has

not yet been set as of the time this Notice was prepared. Notice of that meeting date will be mailed to all persons to whom this Notice of Public Hearing was mailed, or who request notice of the Commission's next meeting.

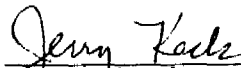
10. The Montana Human Rights Commission maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Office of Legal Services, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

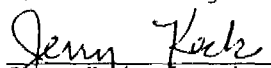
11. The Montana Human Rights Commission has complied with the provisions of 2-4-302, MCA, regarding notification of the bill sponsor about the proposed action regarding these rules.

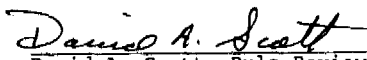
12. The Montana Human Rights Commission proposes to make the amendments, adoptions and repeals effective at the earliest feasible date. The Commission reserves the right to adopt only a portion of the proposed changes, or to adopt some or all of the proposed changes at a later time.

13. Gloria "Patt" Etchert, Chair of the Montana Human Rights Commission, is designated to be the presiding officer at the public hearing, on behalf of the Commission.

Montana Human Rights Commission


Jerry Keck, Alternate Rule
Reviewer for the Commission


Jerry Keck, for the Commission


David A. Scott, Rule Reviewer
for the Department of Labor
and Industry

Certified to the Secretary of State: July 6, 1998.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment)
of rule 16.32.320 pertaining to)
hospital swing beds)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On August 5, 1998, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of rule 16.32.320 pertaining to hospital swing beds.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on July 27, 1998, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

16.32.320 MINIMUM STANDARDS FOR A HOSPITAL--GENERAL REQUIREMENTS (i) ~~A hospital shall comply with the Conditions of Participation for Hospitals in 42 CFR 482.2 through 482.62, subpart A, excluding 42 CFR 482.1, through E, excluding 42 CFR 482.66, revised as of October 1, 1995. The department hereby adopts and incorporates by reference 42 CFR 482.2 through 482.62, subpart A, excluding 42 CFR 482.1, through E, excluding 42 CFR 482.66, revised as of October 1, 1995. A copy of the regulations may be obtained from the Department of Public Health and Human Services, Licensing Bureau, Cogswell Building, P.O. Box 202951, 1400 Broadway, Helena, Montana 59620-2951.~~

(1) A hospital shall comply with the Conditions of Participation for Hospitals in 42 CFR 482.2 through 482.66, revised as of October 1, 1995, with the following amendment:

(a) Delete the text in 42 CFR 482.66(a)(6)(i) and (ii) and replace with the following text:

"(6) A hospital must transfer a long term care patient occupying a hospital swing bed to a skilled or intermediate care nursing facility located within the local service area or the patient's home community within 5 days (excluding weekends and holidays) after learning that a skilled or intermediate nursing

care bed is available, or in the case of a prospective notification, within 5 days of the date the nursing home bed becomes available, unless:

(i) the patient elects in writing to continue to receive care in the hospital swing bed after the hospital has informed the patient in writing of the differences in services required to be offered to a long term care patient occupying a skilled nursing facility bed, as identified in 42 CFR 483, subpart B, and those services required to be offered to a long term care patient occupying a hospital swing bed as identified in (b) of 42 CFR 482.66; or

(ii) the patient's physician certifies, as required under 42 CFR 424.20, that the transfer is not medically appropriate."

(b) The department hereby adopts and incorporates by reference 42 CFR 482.2 through 482.66, revised as of October 1, 1995, as amended by this rule. 42 CFR 482.2 through 482.66 set forth the conditions of participation a hospital must meet to participate in the medicare program. A copy of the regulations may be obtained from the Department of Public Health and Human Services, Licensing Bureau, Cogswell Building, P.O. Box 202951, 1400 Broadway, Helena, Montana 59620-2951.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

3. On January 13, 1997, the department filed with the Secretary of State notice of the proposed adoption of minimum standards for a hospital -- swing beds. In response to that notice, the department received a significant number of comments, both for and against the proposed rule. Because of the number of comments and the concerns raised therein, the department felt that more time was needed to assess the comments than afforded by the Montana Administrative Procedure Act and elected not to proceed with adoption of the proposed rule at that time.

By this notice, the department is proposing minimum standards for a hospital swing bed through incorporation of 42 CFR 482.66 and a swing bed transfer requirement for hospitals. Currently, the swing bed requirements in ARM 46.12.510 through 46.12.513 apply only to Montana hospitals that have been enrolled as Medicaid swing bed providers. There are some Montana hospitals with swing beds that are not enrolled with Medicaid as a swing bed provider, and are therefore not regulated under the Medicaid swing bed requirements. The proposed standards will therefore regulate swing beds in all Montana hospitals.

The proposed amendment will require a hospital to transfer a long term care patient occupying a hospital swing bed to a skilled or intermediate care nursing facility within 5 days upon notice of bed availability. However, the rule would not require a transfer if it would be medically inappropriate or the patient

has elected in writing to stay in the hospital swing bed. Hospital swing beds are not required to meet all the federal nursing home standards that nursing home beds must meet. Swing bed hospitals are, however, required to meet the federal conditions of participation for hospitals. In addition to those conditions of participation, this amendment, as proposed, would require that swing bed hospitals meet certain skilled nursing facility standards as set forth in 42 CFR 482.66(b). The requirements in 42 CFR 482.66(b) pertain to resident rights, admission, transfer and discharge rights, resident behavior and facility practices, patient activities, social services, discharge planning, specialized rehabilitative services and dental services.

The department did consider the option of not including a swing bed transfer requirement for hospitals. However, the department feels that a transfer requirement is appropriate, subject to the two conditions noted in the proposed amendment (patient choice and medically inappropriate transfer), given the system differences between a hospital and a long term care facility.

The department did consider the option of not allowing patients to choose to remain in a swing bed. While the department has proposed a transfer requirement, as noted above, the department is concerned that a forced transfer could potentially compromise patient care, both physically and psychologically, by disrupting the continuity of medical care and reducing the opportunities for family/patient contact. The department believes that with the swing bed requirements in place, coupled with the hospital conditions of participation, that long term patient care would not be compromised in a hospital swing bed. Accordingly, the department proposed to allow patients to exercise decision making rights with regard to their placement.

The proposed amendment requires transfer be made within 5 days from notification of a bed availability; the department believes that this is a reasonable period of time to effect transfer in terms of patient notification and physical transfer.

Finally, the department proposes that the patient, prior to making a choice to remain in a hospital swing bed, should be informed by the hospital of information about the differences between swing beds and nursing home beds. The patient, without such information, may well conclude that the requirements applicable to swing beds and nursing home beds are the same. The patient may decide, upon learning of the differences, that certain services are desirable and that those services are only offered by a skilled or intermediate nursing facility.

In clarification, the proposed amendment does not and should not be interpreted as negating the funding and transfer requirements imposed by Medicare or Medicaid with respect to patient length

of stays in a hospital swing bed.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 202951, Helena, MT 59620-2951, no later than August 13, 1998. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. Department of Public Health and Human Services, Office of Legal Affairs, has been designated to preside over and conduct the hearing.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State July 6, 1998.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of rules 46.12.514,	)	ON PROPOSED AMENDMENT
46.12.515, 46.12.516 and	)	AND REPEAL
46.12.517 pertaining to early)	
and periodic screening,)	
diagnostic and treatment)	
services (EPSDT) and the)	
repeal of 46.12.565,)	
46.12.566 and 46.12.567)	
pertaining to private duty)	
nursing services)	

TO: All Interested Persons

1. On August 5, 1998, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.514, 46.12.515, 46.12.516 and 46.12.517 pertaining to early and periodic screening, diagnostic and treatment services (EPSDT) and the repeal of 46.12.565, 46.12.566 and 46.12.567 pertaining to private duty nursing services.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on July 28, 1998, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

46.12.514 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), PURPOSE, ELIGIBILITY AND SCOPE (1) The early and periodic screening, diagnostic and treatment services (EPSDT) program is a medicaid program which provides coverage of are preventive health screenings, diagnostic services, and medically necessary treatment services as specified in these rules to eligible medicaid recipients under age 21.

(2) Services provided for EPSDT purposes are only available to medicaid eligible persons up to and including 20 years of age.

~~(2) (3) Limitations on the amount, scope or duration of medicaid services which apply generally to for particular services, as specified in department rules applicable to such services funded with medicaid monies, do not apply to such services when provided to medicaid EPSDT recipients under age 21, except as specifically unless otherwise provided in these rules.~~

~~(a) (4) All Criteria, requirements and limitations specified in the department's rules regarding the applicable to eligibility for and the receipt of home and community services provided under a medicaid waiver, ARM 46.12.1401, et seq., shall apply to medicaid recipients under age 21 govern the provision of waiver and EPSDT services to persons who are eligible for both EPSDT and waiver services.~~

~~(b) (5) The exception specified in (2) shall not be construed to apply to Criteria, requirements or restrictions and limitations generally applicable to medicaid services, recipients or providers, including but not limited to medical necessity requirements, experimental or cosmetic service exclusions, prior authorization, prescreening, certification or utilization review requirements, provider participation, billing or reimbursement requirements, recipient eligibility or copayment requirements, or other similar requirements or restrictions apply to EPSDT recipients, EPSDT services and providers of services to EPSDT recipients.~~

~~(3) remains the same in text but is renumbered (6).~~

~~(7) An EPSDT service may only be provided by a provider that is appropriate and qualified to deliver the service in accordance with the relevant and applicable educational, professional and licensing standards and requirements.~~

~~(8) An EPSDT service must be delivered in accordance with those standards and requirements applicable to the provision of the service.~~

~~(9) A service, item or provider category is not available as an EPSDT service unless made available in accordance with these rules.~~

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

46.12.515. EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REQUIRED SCREENING AND PREVENTIVE SERVICES (1) The EPSDT program provides coverage of screening and preventive services provided are available in accordance with these rules this rule.

~~(a) Screening and diagnostic services may be performed by or under the supervision of appropriately licensed practitioners in a mass examination of a designated population or in an individual examination.~~

~~(b) (2) The screening periodicity schedules contained in the department's EPSDT provider manual provide suggested guidelines for determining the minimum The number and timing of~~

comprehensive health, vision, hearing and dental screenings for children under age 21 must be as specified in the EPSDT provider manual.

(a) More frequent screening services than those specified in the EPSDT provider manual are covered when considered medically necessary to determine the existence of suspected physical or mental illnesses or conditions. A copy of the department's EPSDT provider manual is available from the Department of Public Health and Human Services, Health Policy and Services Division, P.O. Box 202951, 1400 Broadway, Helena, Montana 59620-2951.

(c) All of the components listed in (2) are necessary for a complete EPSDT/wellchild screen.

(2)(3) Screening and preventive services must include all of the following: assessments, exams, immunizations, tests, health education and other features as specified in the EPSDT provider manual.

(a) A comprehensive age-appropriate health and developmental history, including assessment of both physical and mental health development, as specified in the EPSDT provider manual. A copy of the department's EPSDT provider manual is available from the Department of Public Health and Human Services, Health Policy and Services Division, P.O. Box 202951, 1400 Broadway, Helena, Montana 59620-2951.

(i) A child must be screened for age appropriate fine and gross motor development, speech and language development, and social and cognitive development.

(b) A comprehensive unclothed physical exam, including a check of the general appearance of the child and a standardized physical exam. This exam should include an assessment of all body systems, and the child's growth and nutritional status.

(c) Appropriate immunizations according to age, health history and in accordance with state immunization laws.

(i) Immunization status must be reviewed and immunizations must be offered in accordance with the recommendations for active immunization for normal children from the Montana department of public health and human services.

(d) Laboratory tests to include lead blood level assessment appropriate to age and risk as specified in the EPSDT provider manual.

(e) Health education appropriate to age and risks, including anticipatory guidance.

(f) Vision services, including age appropriate vision tests as specified in the EPSDT provider manual. A copy of the department's EPSDT provider manual is available from the Department of Public Health and Human Services, Health Policy and Services Division, P.O. Box 202951, 1400 Broadway, Helena, Montana 59620-2951.

(i) The provider must inquire of the child's parent or the child to identify concerns about the child's vision.

(ii) Any child over the age of 3 may be referred directly to an optometrist or ophthalmologist through a preschool or

~~school vision screening program or self referral.~~

~~(g) Dental services, including:~~

~~(i) at a minimum, an annual dental examination by a licensed dentist is required for children from eruption of the first tooth up to age 21;~~

~~(ii) an oral examination of a child's mouth to detect deterioration of hard tissue, and inflammation or swelling of soft tissue;~~

~~(iii) counseling about the systemic use of fluoride must be given to a child when fluoride is not available through the community water or school programs; and~~

~~(iv) after eruption of the first tooth, any child may be referred directly to a dentist for a dental screening through any screening program or by self referral.~~

~~(h) Hearing services, including:~~

~~(i) for children under the age of 3 years:~~

~~(A) assessment for a family history of hearing loss, disability, delay of language acquisition or history of such delay;~~

~~(B) assessment of ability to determine the direction of a sound; and~~

~~(C) assessment for a history of repeated otitis media.~~

~~(ii) an exam of children between 3 and 21 years must include an age appropriate history and exam and a pure tone audiometric test or referral for the test if the examination described above indicates the test is needed; and~~

~~(iii) children identified as having a possible hearing problem through preschool/school hearing screening programs should be referred to a physician for additional evaluation of the identified problem.~~

(4) The department hereby adopts and incorporates herein by reference the department's EPSDT manual, published July, 1998. The EPSDT provider manual, published by the department and sent to all providers of EPSDT services, informs providers of the requirements applicable to the delivery of services and specifies the methodologies and rates of reimbursement for services. A copy of the department's EPSDT provider manual is available from the Department of Public Health and Human Services, Health Policy and Services Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT, 59604-2951.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

46.12.516 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), ADDITIONAL MEDICAL AND OTHER SERVICES (1) EPSDT eligible persons may receive any services otherwise available to persons eligible for medicaid funded services.

(2) In addition to the services specified in ARM 46.12.515 and services generally available to medicaid recipients, the following services are covered by medicaid under the EPSDT

~~program in accordance with these rules for medicaid eligible children under age 21, available to EPSDT eligible persons:~~

~~(a) Nutrition services are covered when the child's physical growth performance indicates a nutritional deficiency. The nutrition services must be performed by a nutritionist or dietitian licensed or registered in accordance with the laws of the state in which he or she is practicing.~~

~~(i) Nutrition services may include screening, assessment, counseling, consultation, education and related services.~~

~~(A) Nutrition screening means the collection of subjective and objective nutritional and dietary data about the individual.~~

~~(a) Nutrition services:~~

~~(i) Nutrition services may include:~~

~~(A) Nutrition counseling for counseling directly with a child, or with a responsible care giver, to explain the nutrition assessment and to implement a plan of nutrition care.~~

~~(B) Nutrition assessment means use of the information obtained in a nutrition screening to evaluate the individual's for evaluation of a child's nutritional problems, and design of a plan to prevent, improve or resolve the identified nutritional problems, based upon the health objectives, resources and capacity of the individual child.~~

~~(C) Nutrition counseling means counseling directly with an individual, or with a responsible caregiver, to explain the nutrition assessment and to implement a plan of nutrition care.~~

~~(D) Nutrition consultation means consultation with or for health professionals, to research or resolve special nutrition problems or to refer an individual to other services, pertaining to the nutritional needs of an individual.~~

~~(E) Nutrition education means routine education for normal nutritional needs.~~

~~(i) Nutrition services must be performed according to accepted standards of nutrition dietetic practice.~~

~~(C) Nutrition consultation for consultation with or for health professionals, researching or resolving special nutrition problems or referring a child to other services, pertaining to the nutritional needs of a child.~~

~~(D) Nutrition education for routine education for normal nutritional needs.~~

~~(b) Chiropractic services: are covered when medically necessary. The chiropractic services Chiropractic services must be performed by a licensed chiropractor in accordance with the laws of the state in which he or she is practicing.~~

~~(i) Chiropractic services are limited to evaluation and management treatment by means of office visits, manual manipulation of the spine, and x-rays to support the diagnosis of subluxation of the spine. X-rays must have been taken within 12 months preceding the date of service.~~

~~(c) Outpatient chemical dependency treatment: is covered when determined appropriate by a certified chemical dependency counselor. Services covered are:~~

~~(i) Outpatient chemical dependency treatment may include:~~

~~(i)(A) Intensive outpatient treatment provided by a chemical dependency treatment program approved by the department under ARM Title 20, chapter 3 provides intensive outpatient services according to applicable laws, rules and regulations; and~~

~~(A) A plan of care for intensive outpatient treatment must be prepared in accordance with the department's criteria under ARM Title 20, chapter 3 for intensive outpatient treatment, and must include aftercare.~~

~~(B) Aftercare means counseling services provided to a client who has completed inpatient or intensive outpatient care to enhance the chances of recovery. This service is provided at least once weekly (generally in a group setting) for a period of at least 12 weeks.~~

~~(ii) (B) Basic outpatient treatment provided by a chemical dependency treatment program approved by the department under ARM Title 20, chapter 3 to provide basic outpatient services according to applicable laws, rules and regulations;~~

~~(A) A plan of care for basic outpatient treatment must be prepared in accordance with the department's criteria adopted under ARM Title 20, chapter 3, for basic outpatient treatment.~~

~~(iii) Aftercare treatment provided by department approved providers to adjudicated youth who have received inpatient treatment funded by the department or the department of corrections; and~~

~~(ii) Outpatient chemical dependency treatment must be determined appropriate by a certified chemical dependency counselor.~~

~~(iii) Outpatient chemical dependency treatment must be delivered by facilities or programs approved by the department.~~

~~(iv) when an eligible child receives outpatient chemical dependency treatment, and the Consultation for treatment by a certified chemical dependency counselor consults with the a parent as part of the child's treatment, the time spent with the parent shall must be billed to medicaid under the child's name and medicaid number. The provider shall must indicate on the claim that the child is the patient, and state the child's diagnosis. The provider shall also and indicate consultation was with the parent.~~

~~(d) Respiratory care services are covered when medically necessary and ordered by a physician, in accordance with the laws of the state where the services are provided.~~

~~(e) EPDST covers pharmaceutical drugs approved for use under investigational drug status by the federal drug administration and provided under specific controlled programs under the supervision of a physician licensed to practice medicine.~~

~~(f) Subject to the requirements of ARM Title 46, chapter 12, EPDST covers any vision, hearing, dental, nutrition or other health care service which the department determines medically necessary as defined in department rules if it is a service which states are permitted by federal law, regulation and policy~~

to cover under the medicaid program, regardless of whether such services are otherwise covered under the Montana medicaid state plan.

~~(i) Services, items and provider categories not specifically covered under this chapter are reimbursable by Montana medicaid under the EPSDT program only if:~~

~~(A) the provider is in compliance with any applicable licensure requirements of state law for provision of the proposed services or items; and~~

~~(B) prior to provision of the service or item, the department authorizes medicaid coverage of the service or item after consideration of medical necessity of the proposed service or item, the proposed setting for delivery of the service, or item, the proposed provider of the service or item, the recipient's access to alternative treatments, settings or providers, and other relevant factors.~~

~~(f) Private duty nursing:~~

~~(i) Private duty nursing services include:~~

~~(A) skilled nursing services provided directly to a child; and~~

~~(B) patient-specific training provided to a registered nurse or licensed practical nurse when a child is new to the nursing agency, when a change in the condition of a child requires additional training for the current nurse, or when a change in nursing personnel requires a new nurse to be trained to care for a child.~~

~~(ii) Private duty nursing services do not include:~~

~~(A) psychological or mental health counseling;~~

~~(B) nurse supervision services including chart review, case discussion or scheduling by a registered nurse; or~~

~~(C) travel time to and from the recipient's place of service.~~

~~(iii) Private duty nursing services must be authorized prior to the provision of services and any time the plan of care is amended. Authorization must be renewed with the department or the department's designated review agent every 90 days during the first 6 months of services, and every 6 months thereafter.~~

~~(A) Authorization is based on approval of a plan of care by the department or department's designated review agent.~~

~~(iv) A provider of private duty nursing services must be an incorporated entity meeting the legal criteria for independent contractor status that either employs or contracts with nurses for the provision of nursing services. The department does not contract with or reimburse individual nurses as providers of private duty nursing services.~~

~~(g) Other services, items and provider categories:~~

~~(i) Other services, items and provider categories must be prior authorized by the department.~~

~~(ii) The department determines the appropriateness of a service, item or provider category after consideration of medical necessity of the proposed service, item or category, the proposed setting for delivery, the proposed provider, the~~

child's access to alternative treatments, settings or providers, and other relevant factors.

~~(ii) This rule shall not be construed to require EPSDT coverage of every federally permitted service or item through every possible treatment, setting or provider type.~~

~~(iii)~~ (3) Requests for prior authorization may must be made in writing to the Department of Public Health and Human Services, Health Policy and Services Division, Medicaid Services Bureau, P.O. Box 202951, 1400 Broadway, Helena, Montana 59620-2951 59604-2951, or by phoning the health policy and services division medicaid services bureau at (406) 444-4540.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

46.12.517 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT (1) The department will pay Reimbursement for an EPSDT service, except as otherwise provided in this rule, is the lowest of the following for the early and periodic screening, diagnostic and treatment services specifically listed in these rules:

(a) the provider's actual submitted usual and customary charge for the service;

(b) the amount allowable for the same service under medicare if the service is also covered by medicare for the recipient; or

(c) the department's fee schedule for each type of service the reimbursement determined in accordance with the methodologies provided in ARM 46.12.502A and 46.12.2003 except for the by report method.

~~(2) The department's fee schedule for EPSDT services which are generally covered for recipients of all ages under this chapter shall be the reimbursement specified in the department's rules applicable to each particular service.~~

~~(3) The department's fee schedules for EPSDT services which are not generally covered for recipients of all ages under this chapter shall be as follows:~~

~~(a) Reimbursement for nutritional, respiratory care and chiropractic services shall be as specified in a fee schedule set and maintained by the department in accordance with ARM 46.12.2003(3).~~

~~(b)~~ (2) Reimbursement for outpatient chemical dependency treatment, nutrition, and private duty nursing services shall be as specified in ARM 46.12.624 is specified in the department's EPSDT provider manual. The EPSDT provider manual, published by the department and sent to all providers of EPSDT services, informs providers of the requirements applicable to the delivery of services and specifies the methodologies and rates of reimbursement for services. The department hereby adopts and incorporates herein by reference the department's EPSDT provider manual, published July, 1998. A copy of the manual may be obtained from the Department of Public Health and Human

Services, Health Policy and Services Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

~~(4) (3) Medicaid reimbursement for A services not specifically listed as covered for which a fee is not set in or determinable through the EPSDT provider manual, ARM 46.12.502A, or 46.12.2003 under the EPSDT program will be is reimbursed at a rate fee negotiated in advance of providing the provision of the service. Such A services provided before there is a negotiated fee negotiating and agreeing upon a rate with the department will be is reimbursed at a rate an amount determined by the department.~~

~~(5) (4) Information regarding current reimbursement or copies of fee schedules for EPSDT services may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.~~

~~(6) Providers of EPSDT services must comply with all applicable licensing and certification requirements and must comply with all enrollment, participation, billing and other requirements generally applicable to Medicaid providers under the department's rules.~~

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

4. The rules 46.12.565, 46.12.566, and 46.12.567, as proposed to be repealed are on pages 46-1319 and 46-1320 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, 53-5-111 and 53-6-113, MCA

5. The rules to be amended govern the provision of Medicaid early and periodic screening, diagnostic and treatment services (EPSDT) to persons up to and including 20 years of age. The services are for the identification and treatment of the medical needs and problems of children. The federal authority for this aspect of Medicaid services requires broader coverage of screening, diagnostic and treatment services by Medicaid than would be the case under the general Medicaid program. Consequently, the implementing rules must provide more comprehensive coverage of services, provide for additional services, provide further requirements, and address reimbursement of the expanded and additional services.

The proposed rule amendments are generally necessary to incorporate certain substantive changes to services and to make changes in language and structure for clarity. The substantive changes relate to the implementation of Medicaid managed mental health care and to changes in provider reimbursement.

Repeal of ARM 46.12.565, 46.12.566, and 46.12.567

The proposed repeal of the rules relating to private duty nursing is necessary in that private duty nursing, as a service, is not available generally as a medicaid service. Private duty nursing is, however, available to medicaid recipients who are children. As noted in the rationale for the proposed amendments to ARM 46.12.516 and 46.12.517, the specific programmatic requirements and reimbursement for private duty nursing as an EPSDT service, are proposed for incorporation into those rules which directly pertain to EPSDT services.

The option of repeal is being selected since the logical sources of information for consumers and providers interested in EPSDT services are EPSDT specific rules and provider manual. The placement of private duty nursing requirements in the EPSDT rules will consolidate all the rule related materials for those services that are exclusively EPSDT services into one rule set.

ARM 46.12.514

The proposed rule amendments to ARM 46.12.514, PURPOSE, ELIGIBILITY AND SCOPE, are necessary to improve the understanding for the public of eligibility based on age. One proposed amendment will more explicitly establish the age class for EPSDT eligibility and will do so through a rule of general applicability. Under the current set of rules, the age criteria is stated in some specific service sections but not stated in a general rule. This proposed change allows for deletion of redundant and inappropriately cited references to the age criteria. In addition, the new phrasing "up to and including 20 years of age" is necessary to reduce confusion on the scope of the age class. In the past, many persons have been confused by the phrasing "under 21 years of age".

The inconsistent use of the EPSDT age criteria across the various provisions relating to specific services funded through EPSDT resulted in confusion as to applicability of the criteria generally. Consequently, the option of retaining the various statements of age criteria was not acceptable. The use of a rule of general applicability is the only option that assures that in relation to the applicability of age to the EPSDT services no confusion arises from inconsistent use of the age criteria across the various provisions on specific services.

Public confusion over the extent of age coverage through EPSDT arose with the usage of the phrase "under 21 years of age". That phrase was often misinterpreted as providing for coverage of persons who were the age of 21. Consequently, the option of retaining the language was not acceptable. The proposed phrase of "up to and including 20 years of age" is the only option that states the applicable criteria without the possible appearance that it might incorporate 21 years of age.

The proposed amendment, inserting scope among the limitations, is necessary to provide that the inapplicability of the medicaid limitations relating to services encompasses scope in addition to amount and duration. Scope had been inadvertently left out of the current language. This change was the only option that would appropriately reflect the governing federal authority.

The proposed amendment, relating to requirements and limitations for EPSDT eligible persons who receive medicaid home and community waiver services, is necessary to correct misleading language that appeared to make the home and community requirements and limitations applicable to all EPSDT eligible persons rather than just to those who were also in the home and community services program. This change was the only option that would appropriately reflect the governing federal authority.

The proposed amendments, providing that services be delivered by appropriate and qualified providers and be delivered in accordance with the relevant standards and requirements, are necessary to clearly state those standards in a provision of general applicability. The option of leaving the standards in various provisions relating to specific services is not acceptable due to the confusion as to applicability that is engendered by such inconsistent usage.

The proposed amendment, providing that EPSDT services are only available as specified in rule, is necessary to clearly state the limitation in a context that makes it apparent. The statement is currently contained in a provision under ARM 46.12.516. Since ARM 46.12.516 does not address all the possible services, the limitation as currently stated in that rule would appear to have limited applicability. The option of not stating the limitation is unacceptable in that the program could potentially incur significant costs and have to dedicate resources to resolving administrative problems.

ARM 46.12.515

ARM 46.12.515, REQUIRED SCREENING AND PREVENTIVE SERVICES, specifies screening and preventive services for purposes of the EPSDT program and provides the criteria for the provision of those services.

The proposed changes to ARM 46.12.515 are necessary to provide for changes in language and structure for clarity and to remove redundant language on the availability of the EPSDT provider manual. Language concerning licensing of practitioners and age of eligibility is proposed for deletion in that it would be unnecessary upon the adoption of provisions to that effect of general applicability in ARM 46.12.514. The option of not providing for these changes was not selected since adoption of

the changes as proposed will reduce confusion as to the application of general requirements.

The detailed descriptions and requirements relating to EPSDT screening and preventive services, proposed for deletion in the rule, would be incorporated into the EPSDT provider manual. The removal of the material from the rule and its placement into the manual is necessary and appropriate in that the provider manual is the source of information generally relied upon by providers and the material on screening and preventive services can encompass much detail and be subject to somewhat frequent changes. This option is the best option for significantly reducing the material in the rule without jeopardizing the access and comprehension of providers.

ARM 46.12.516

ARM 46.12.516, MEDICAL AND OTHER SERVICES, specifies those medical and other treatment services that are available through the EPSDT program and provides the criteria for the provision of those services.

The proposed provision providing that the program generally covers the established medicaid services is necessary to affirmatively state the scope of coverage. This option, as compared to the existing lack of an affirmative statement, clearly establishes this aspect of the coverage available through EPSDT services.

Several amendments remove language that states the requirement that services be delivered by appropriately licensed or certified professionals. As noted in the discussion concerning the amendments to ARM 46.12.514, a general rule of applicability in relation to such requirements is proposed for adoption in ARM 46.12.514.

The proposed deletion of most of the provisions relating to nutrition services for screening and preventive purposes are necessary in order to place the material in the EPSDT provider manual along with the screening and preventive material proposed for deletion from ARM 46.12.515 and for placement into the manual. The proposed deletion of the material from this rule is necessary and appropriate in that the material is best stated in the manual due to its volume of detail and for potential change. The resulting consolidation of the screening and preventive material into the manual is necessary and appropriate for access and comprehension by providers and program administrators. If this option were not selected there could continue to be a potential problem for providers in comprehending the scope to these services.

The provisions relating to outpatient chemical dependency

treatment have been restructured and reworded as necessary to improve the comprehension of those requirements. This option, as compared to the existing structure and language, is the best option in that it clearly presents and states the requirements for the service.

The proposed deletion of the provision, providing that coverage not extend to every federally permitted service or item and every possible treatment, setting or provider type, is necessary in that it is a limitation of general applicability and this rule concerns only treatment services under EPSDT. This limitation is proposed for inclusion in ARM 46.12.514 in revised language that states that a service, item or provider category is not available as an EPSDT service unless specified in these rules. This option, as compared to the existing placement and language, is the best option in that it places the limitation into the rule that contains such general requirements for the program where users can expect to find it and where comprehension of its general application will be enhanced by the placement.

The proposed addition of provisions for private duty nursing are necessary to consolidate this service with the other EPSDT specific treatment services. Private duty nursing in the past was more generally available as a medicaid service and therefore had its own rule set. Currently, it is only available through the EPSDT program. Consequently, the proposed inclusion of it along with its related requirements provisions into this rule is necessary to present all EPSDT specific treatment services in one rule. This option, as compared to the current existing stand apart set of rules for the service, is the best option in that it provides a more comprehensive compilation of treatment services and related requirements that can effectively guide program personnel, providers and consumers.

The proposed addition of requirements, including prior authorization, relating to other services, items and provider categories, is necessary to assure that prior to use of other services, items, or provider categories, there is review to determine that the proposed service, item, or provider category is appropriate. This review is the only option procedurally that will assure the efficacy of a service and prevent the derogation of EPSDT services.

ARM 46.12.517

ARM 46.12.517, REIMBURSEMENT, specifies the reimbursement methodologies that are applicable to the services provided through the EPSDT program.

The proposed amendments to this rule, referencing rules ARM 46.12.502A and 46.12.2003 for purposes of reimbursement, are

necessary since the reimbursement methodology for EPSDT services generally is currently that established for reimbursement of professional types of services funded with medicaid monies. That methodology is known as the resource based relative value scale (RBRVS) reimbursement system. This proposed option, is the best option, as compared to the previous reimbursement schemes, in that it further consolidates reimbursement for medicaid funded professional services under the RBRVS reimbursement scheme that providers are familiar with and that is otherwise commonly used.

The reimbursement schemes for nutrition, private duty nursing, and outpatient chemical dependency services are proposed to be adopted through incorporation by reference to a departmental manual. That approach is necessary in that these services unlike other EPSDT services do not have nationally established CPT codes and are therefore not part of RBRVS reimbursement system generally adopted for professional medical services reimbursement at ARM 46.12.502A. The fees adopted in the manual for these services are those currently in place that are based on historically established rates with legislated increases. The option of adopting these rates through incorporation by reference to the published manual is the best option in that it is the vehicle and notice procedure that providers are accustomed to and can readily access. The option of establishing and maintaining reimbursement on historically based legislatively adjusted rates is the best option in that in the absence of rates based on the universal CPT/RBRVS system of reimbursement the historically established rates are those to which providers are accustomed.

The proposed deletion of the provision, providing that providers must comply with all applicable licensing and certification requirements and must comply with all enrollment, participation, billing and other requirements generally applicable to medicaid providers, is necessary in that these are requirements of general applicability and this rule concerns reimbursement. These requirements appear in a provision being proposed for in ARM 46.12.514 which is the appropriate rule for matters of general applicability. This option, as compared to the existing placement, is the best option in that these requirements will be stated in the appropriate rule for general program requirements which is where users can expect to find such requirements and will avoid any possibility of confusion due to the same requirements being expressed twice in differing language and with differing contexts.

6. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than August 13, 1998. The Department also maintains lists of persons

interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

7. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Glavin
Rule Reviewer

Hank Hudson for
Director, Public Health and
Human Services

Certified to the Secretary of State July 6, 1998.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE PROPOSED) NOTICE OF THE PROPOSED AMENDMENT
AMENDMENT of ARM 42.17.131)
relating to Withholding)
Allowances) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 27, 1998, the Department of Revenue proposes to amend ARM 42.17.131 relating to withholding allowances.

2. The rule as proposed to be amended provides as follows:

42.17.131 WITHHOLDING ALLOWANCES (1) For purposes of determining the employee's withholding allowances, for purposes of determining the amount of tax to be withheld are deemed to be, unless the department has determined otherwise, is the same as or less than those claimed on the I.R.S. Form W-4 withholding allowance certificate, (on the line stating "Total number of allowances you are claiming"), furnished by the employee to his the employer for federal withholding tax purposes. The department may determine the amount claimed on the I.R.S. Form W-4 should be adjusted. Accordingly, the The department of revenue does not provide forms for this purpose. The department has determined that the federal child tax credit which allows extra allowances for federal withholding is not allowed for state purposes when determining the number of allowances for state withholding.

(2) and (3) remain the same.

(4) Any change to the "Total number of allowances you are claiming", on Form W-4 for federal purposes, including federal redeterminations of allowances automatically changes the number of allowances for Montana purposes unless the allowances have been set at a fixed number by the department under subsection (5) below. If a redetermination allows extra allowances for the federal child tax credit for federal purposes, these extra allowances will not be allowed for state purposes.

(5) remains the same.

(6) When adjusting claimed withholding allowances for an employee under subsection (5) above, the department shall consider:

- (a) exemptions provided under 15-30-112, 15-30-113 and 15-30-114, MCA;
- (b) marital status and number of employers;
- (c) estimated wages and salaries;
- (d) estimated allowable deductions under 15-30-121, 15-30-122, 15-30-123 and 15-30-131, MCA to the extent that such

deductions exceed the average itemized deductions taken into account in the withholding tables;

- (e) business losses;
- (f) annuity plan contributions; and
- (g) residency.

(7) If an employee fails to provide the department with sufficient information to make the determination in ~~subsection~~ (6) above, the department shall use its best estimate of the employee's eligible exemptions when determining the withholding allowances.

AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-202 MCA.

3. These amendments are necessary because the federal government revised the W-4 Form for tax year 1998. Prior to the revision to the W-4 Form, Montana could use the federal form because the computation to determine the number of allowances was the same. If Montana allows the extra credits the federal government allows, too little tax will be withheld from taxpayers and an additional tax will be due for Montana tax purposes when the the Montana income tax return is filed. The purpose of withholding is to attempt to match the taxpayer's tax liability at the end of the tax year with the amount withheld during the year.

4. Interested parties may submit their data, views, or arguments concerning the proposed action in writing to:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620


no later than August 14, 1998.

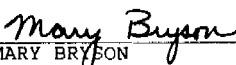
5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than August 14, 1998.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined

to be greater than 25.

7. All parties interested in receiving notification of any change in rules pertaining to this subject should contact the Rule Reviewer in writing at the address shown in section 4 above.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State July 6, 1998

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 4.5.203 pertaining)
to Category 2 noxious weeds.)
)
)

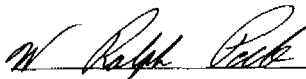
TO: All Interested Persons

1. On April 16, 1998, the Department of Agriculture published a notice of proposed amendment of rule 4.5.203 pertaining to changes in category 2 noxious weeds, at page 809 of the 1998 Montana Administrative Register, Issue No. 7.

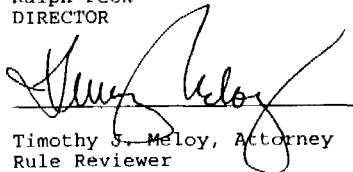
2. The department has amended the rule 4.5.203, exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE



Ralph Peck
DIRECTOR



Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State July 6, 1998.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF ADOPTION
of a New Rule pertaining)	
to Weed district supervisor)	
training)	
)	

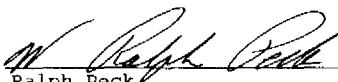
TO: All Interested Persons:

1. On April 16, 1998, the Department of Agriculture published a notice of proposed adoption of New Rule I, (ARM 4.5.501), referenced above at page 811 of the 1998 Montana Administrative Register, issue number 7.

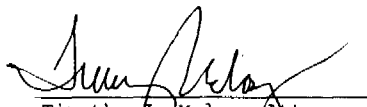
2. The department has adopted the new rule, exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE



Ralph Peck
Director



Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State July 6, 1998.

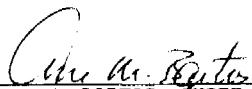
BEFORE THE CHEMICAL DEPENDENCY COUNSELOR
CERTIFICATION PROGRAM
DEPARTMENT OF COMMERCE
STATE OF MONTANA

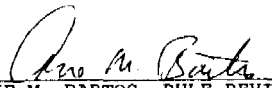
In the matter of the) NOTICE OF ADOPTION OF NEW
adoption of a rule pertaining) RULE I (8.11.120) UNPROFES-
to unprofessional conduct) SIONAL CONDUCT

TO: All Interested Persons:

1. On May 28, 1998, the Chemical Dependency Counselor Certification Program of the Department of Commerce published a notice of proposed adoption of the above-stated rule at page 1305, 1998 Montana Administrative Register, issue number 10.
2. The Department has adopted the rule exactly as proposed.
3. No comments or testimony were received.

CHEMICAL DEPENDENCY COUNSELOR
CERTIFICATION PROGRAM
DEPARTMENT OF COMMERCE

BY: 
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 6, 1998.

BEFORE THE BOARD OF LANDSCAPE ARCHITECTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rule pertaining to fees) 8.24.409 FEE SCHEDULE

TO: All Interested Persons:

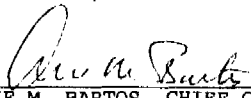
1. On April 30, 1998, the Board of Landscape Architects published a notice of proposed amendment of the above-stated rule at page 1058, 1998 Montana Administrative Register, issue number 8.

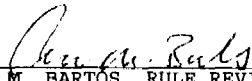
2. The Board has amended the rule exactly as proposed.

3. No comments or testimony were received.

BOARD OF LANDSCAPE ARCHITECTS
JAMES FOLEY, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 6, 1998.

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

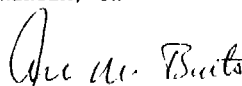
In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to applica-	)	8.56.402 APPLICATIONS,
tions, continuing education,	)	8.56.414 CONTINUING
permit application - types and	)	EDUCATION, 8.56.602 PERMIT
unprofessional conduct	)	APPLICATION - TYPES AND
	)	8.56.801 UNPROFESSIONAL
	)	CONDUCT

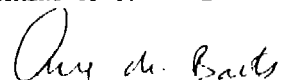
TO: All Interested Persons:

1. On May 14, 1998, the Board of Radiologic Technologists published a notice of public hearing on the proposed amendment of the above-stated rules at page 1241, 1998 Montana Administrative Register, issue number 9. The public hearing was held on June 11, 1998, in Helena, Montana.
2. The Board has amended the rules exactly as proposed.
3. No comments or testimony were received.

BOARD OF RADIOLOGIC TECHNOLOGISTS
JIM WINTER, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 6, 1998.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of rules pertaining to the) OF RULES 8.94.4102
Single Audit Act) AND 8.94.4103

TO: All Interested Persons:

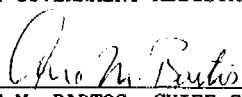
1. On May 28, 1998, the Local Government Assistance Division published a notice of proposed amendment of the above-stated rules at page 1355, 1998 Montana Administrative Register, issue number 10.

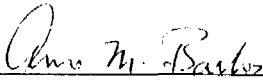
2. The Division has amended the rules exactly as proposed.

3. No comments or testimony were received.

LOCAL GOVERNMENT ASSISTANCE DIVISION

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 6, 1998.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT TO ARM
amendment of Teacher	)	10.57.204 EXPERIENCE VERIFICATION
Certification)	

To: All Interested Persons

1. On April 16, 1998, the Board of Public Education published a notice of proposed amendment concerning ARM 10.57.204 Experience Verification on page 826 of the 1998 Montana Administrative Register, Issue No. 7.

2. The Board has amended ARM 10.57.204 as proposed.

3. No comments were received.



Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 7/6/98.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA


In the matter of the	)	NOTICE OF AMENDMENT TO ARM
amendment of Teacher	)	10.57.215 RENEWAL
Certification	)	REQUIREMENTS

To: All Interested Persons

1. On April 16, 1998, the Board of Public Education published a notice of proposed amendment concerning ARM 10.57.215 Renewal Requirements on page 836 of the 1998 Montana Administrative Register, Issue No. 7.

2. The Board has amended ARM 10.57.215 as proposed.

3. No comments were received.


Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 7/6/98.

In the matter of the) NOTICE OF AMENDMENT TO ARM
amendment of Teacher) 10.57.220 REGENCY OF CREDIT
Certification)

1. On April 16, 1998, the Board of Public Education published a notice of proposed amendment concerning ARM 10.57.220 Recency of Credit on page 830 of the 1998 Montana Administrative Register, Issue No. 7.

10.57.220 RECENCY OF CREDIT

(1) (d) will remain the same.

(2) An applicant for initial certification whose degree is over 15 years old or an applicant whose period of lapse is over 15 years must obtain the credits listed in (1) and the following credits based on teaching or specialist experience;

(a) No teaching/specialist or equivalent experience since the original training - +4 additional sem (6 qtr) credits (graduate level for specialists)

(b) 1-4 years teaching/specialist
or equivalent experience -

(c) 5-10 years teaching/specialist or equivalent experience - +2 additional sem (2 qtr) credits (graduate level for specialists)

(d) over 10 years teaching/
specialist equivalent
experience -

(3) remains the same.

3. The revisions were necessary to correct a typographical error and an inadvertent omission in the original proposed amendment.

4. The Board received 3 comments in support of the proposed amendment.


Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 7/6/98

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT TO ARM
amendment of Teacher	)	10.57.301 ENDORSEMENT
Certification	)	INFORMATION

To: All Interested Persons

1. On April 16, 1998, the Board of Public Education published a notice of proposed amendment concerning ARM 10.57.301 Endorsement Information on page 832 of the 1998 Montana Administrative Register, Issue No. 7.

2. The Board has amended ARM 10.57.301 as proposed.

3. No comments were received.


Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 7/6/98.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA


In the matter of the	)	NOTICE OF AMENDMENT TO ARM
amendment of Teacher	)	10.57.301 ENDORSEMENT
Certification	)	INFORMATION

To: All Interested Persons

1. On April 16, 1998, the Board of Public Education published a notice of proposed amendment concerning ARM 10.57.301 Endorsement Information on page 838 of the 1998 Montana Administrative Register, Issue No. 7.

2. The Board has amended ARM 10.57.301 as proposed.

3. The Board received 2 written comments in support of the proposed amendment.


Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 7/6/98.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA


In the matter of the	)	NOTICE OF AMENDMENT TO ARM
amendment of Teacher	)	10.57.401 CLASS 1 PROFESSIONAL
Certification	)	TEACHING CERTIFICATE

To: All Interested Persons

1. On April 16, 1998, the Board of Public Education published a notice of proposed amendment concerning ARM 10.57.401 Professional Teaching Certificate on page 834 of the 1998 Montana Administrative Register, Issue No. 7.

2. The Board has amended ARM 10.57.401 as proposed.

3. No comments were received.



Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 7/6/98.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA


In the matter of the	)	NOTICE OF AMENDMENT TO ARM
amendment of Teacher	)	10.57.403 CLASS 3 ADMINISTRATIVE
Certification	)	CERTIFICATE

To: All Interested Persons

1. On April 16, 1998, the Board of Public Education published a notice of proposed amendment concerning ARM 10.57.403 Class 3 Administrative Certificate on page 840 of the 1998 Montana Administrative Register, Issue No. 7.

2. The Board has amended ARM 10.57.403 as proposed.

3. The Board received 2 written comments in support of the proposed amendment.


Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 7/6/98.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA


In the matter of the	)	NOTICE OF AMENDMENT TO ARM
amendment of Teacher	)	10.57.406 CLASS 6 SPECIALIST
Certification	)	CERTIFICATE

To: All Interested Persons

1. On April 16, 1998, the Board of Public Education published a notice of proposed amendment concerning ARM 10.57.406 Class 6 Specialist Certificate on page 828 of the 1998 Montana Administrative Register, Issue No. 7.

2. The Board has amended ARM 10.57.406 as proposed.

3. No comments were received.


Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 7/6/98.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of)	
rules 17.38.101, 17.38.202,)	
17.38.207, 17.38.208, 17.38.215)	CORRECTED NOTICE OF
through 17.38.218, 17.38.226,)	AMENDMENT OF RULES
17.38.229, 17.38.234, 17.38.235,)	
17.38.239, 17.38.244, 17.38.256)	
and 17.38.270, updating)	
public water supply and public)	
sewage system rules.)	(Public Water Supply)

To: All Interested Persons

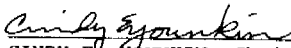
1. On April 3, 1998, the board approved amendment of the above-listed rules with the exception of 17.38.215(1)(b). The board deferred action on that sub-section to its meeting on June 12, 1998.

2. On June 25, 1998, the board published the second notice of amendment for 17.38.215(1)(b) at page 1730 of the 1998 Montana Administrative Register, Issue No. 12.

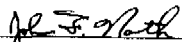
3. The second notice of amendment did not clearly set forth the amendment of the rule. The following changes were made to the rule:

- 17.38.215 BACTERIOLOGICAL QUALITY SAMPLES (1) through
- (1)(b)(i) Remain as amended.
 - (1)(b)(ii) Is deleted in its entirety.
 - (1)(b)(iii) Remains the same in text, but is renumbered
 - (1)(b)(ii).
 - (1)(c) through (8) Remain as amended.

BOARD OF ENVIRONMENTAL REVIEW


CINDY E. CUNKIN, Chairperson

Reviewed by:


JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State July 6, 1998.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of Adoption	)	CORRECTED NOTICE
of Rules Implementing	)	OF ADOPTION OF RULES
SB 396 (Natural Gas Utility)	
Restructuring and Customer Choice)	
Act, Title 69, Chapter 3, part 14,)	
MCA) and Pertaining to Standards)	
of Conduct, Anticompetitive and)	
Abusive Practices, Supplier)	
Licensing, and Universal System)	
Benefits.)	

TO: All Interested Persons

1. On June 11, 1998, the Department of Public Service Regulation published a notice, at page 1506, of the Montana Administrative Register, Issue No. 11, of the adoption of the above-captioned rules.

2. 38.5.7010(1)(g) should be revised to read as follows:

38.5.7010 GAS SUPPLIERS -- APPLICATION FOR LICENSE

(1) through (1)(f) same as adopted

(g) the name, mailing address, street address, and telephone number of the applicant's agent for service of process in Montana, if required ~~to~~ by law to designate such agent;

(1)(h) through (5) same as adopted

3. Replacement pages for the corrected notice of adoption were submitted to the Secretary of State on June 30, 1998.


NANCY McCAFFREE, Vice Chair

CERTIFIED TO THE SECRETARY OF STATE JUNE 18, 1998.


Reviewed By Robin A. McHugh

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of the Adoption of) NOTICE OF ADOPTION
Rules Implementing Senate Bill 390)
(Electric Utility Industry)
Restructuring and Customer Choice)
Act, Title 69, chapter 8, (MCA)),)
Pertaining to Electricity)
Supplier Licensing, Reporting)

TO: All Interested Persons

1. On April 30, 1998, the Department of Public Service Regulation, Public Service Commission (Commission) published a notice of public hearing on the proposed adoption of rules pertaining to implementation of SB390, at pages 1121 through 1127, number 8 of the 1998 Montana Administrative Register.

2. The Commission conducted the public hearing on May 20, 1998, in the offices of the Commission, 1701 Prospect Avenue, Helena, Montana, in the Bollinger Hearing Room. Ten individuals representing themselves or their companies or associations commented at the public hearing. Written comments were received through the May 28, 1998, comment deadline from the following: Montana Public Interest Research Group (MontPIRG), Montana Food Distributors Association (MFDA), Montana Environmental Information Center (MEIC), Natural Resources Defense Council, Northwest Energy Coalition and Renewables Northwest Project (collectively NRDC), Montana Electric Cooperatives Association (MECA), Illinova Energy Partners (Illinova), Montana Power Trading and Marketing Company (MPTM), Montana Power Company Energy Services Division (MPES), Montana-Dakota Utilities Company (MDU), PacifiCorp (PPL), Commercial Energy of Montana (Commercial), Enron Capital and Trade Resources Corp. (Enron), Energy West Resources (EWR), Avista Energy, Inc. (Avista), and Montana Consumer Counsel (MCC). Not all of these persons commented on each of the proposed rules and some commented on only one or a few rules. The comments are summarized and addressed in paragraph 4.

3. The Commission has adopted the following rules as proposed, but with the amendments in response to concerns raised in comments. Matter to be added is underlined (excluding captions already underlined) and matter to be deleted is interlined.

RULE 1. (38.5.8001) GENERAL REQUIREMENT TO OBTAIN LICENSE TO SUPPLY ELECTRICITY (1) All electricity suppliers, including unregulated public utility affiliates, for profit affiliates of cooperative utilities that provide electricity supply service using public utility distribution facilities, market aggregators, marketers and brokers must file an application and

receive a license from the public service commission before selling or offering to sell electricity to consumers in the state of Montana. An application must include a certificate of service showing that the application was sent to each distribution services provider on a list of providers created and maintained by the commission. The commission will issue a license within 30 days of receipt of a complete application. The commission may reject an application deemed incomplete or inadequate, and issue an order specifying the deficiencies of the application and, if practical, identify alternative ways to overcome deficiencies.

(2) An electric cooperative supplying electricity to its members is not required to obtain a license from the commission, whether or not the electric cooperative has opened its local distribution system to other suppliers. A for-profit affiliate of an electric cooperative must obtain a license from the commission before supplying electricity to the parent cooperative's members.

AUTH: 69-8-403, MCA; IMP: 69-8-404, MCA.

RULE II. (38.5.8002) CONTENTS OF APPLICATION FOR LICENSE TO SUPPLY ELECTRICITY (1) Except as provided for in (2) and (3), an applicant shall include the following information in an application for a license to supply electricity:

(a) complete business name of the applicant, and all names that may be used when marketing electricity supply services to consumers;

(b) complete street and mailing address of the applicant's principal office;

(c) if intending to serve or solicit residential or commercial (under 20300 KWKW) consumers, the address and direct, toll-free phone number of the department or office that should be contacted by consumers regarding supply;

(d) the name of a regulatory contact who should be contacted regarding the application, and the address, direct phone number, fax number and e-mail address of that person;

(e) the name and business address of all applicant's officers and directors, partners, or other similar officials, and a statement that neither the applicant, nor any of its officers and directors, partners or other similar officials are currently in violation of, and within the past three years have not violated, any state or federal consumer protection laws or rules;

(f) descriptions of the activities and purposes of applicant, including:

(i) customer segments which applicant intends to serve or solicit (e.g., residential, small business (under 20 kW), commercial, industrial); and

(ii) products offered to each customer segment; and
(iii) geographic areas, including a list of Montana cities, public utility and cooperative utility electric distribution service territories in which applicant intends to provide service or solicit customers;

(g) a list of affiliates, a corporate organization diagram, a description of each affiliate's activities and purposes, a description, including location, of any distribution facilities owned or operated by ~~thean~~ an affiliate in the state of Montana and ~~a statement on whether the facilities are the status of open and accessible on a nondiscriminatory access to those facilities for basis-toall electricity suppliers;~~

(h) the state(s) under which applicant is organized, the form(s) of organization (corporation, partnership, association, firm, individual, etc.), the date of organization and duration, and a list of states where applicant is currently licensed or registered to provide electricity supply;

~~(i) a complete description of principal property owned by the applicant and the scope of its operations;~~

~~(j) verification an agreement that, on commission request, the applicant will demonstrate that it has obtained or will obtain generation capacity, power purchases and transmission rights sufficient to deliver subscribed retail electricity services with a 10 percentadequate reserves margin;~~

~~(j) an agreement to comply with reliability criteria established by the North American Electric Reliability Council and the Western Systems Coordinating Council and Mid-Continent Area Power Pool, as applicable;~~

~~(k) prior to executing contracts with residential and commercial (under 300 kW) customers, a demonstration of applicant's financial integrity through one of the following:~~

~~(i) a long term bond (or other senior debt) rating of BBB-, or equivalent debt or credit rating, obtained in one of the following ways:~~

~~(A) the rating must be determined by Standard & Poors, Dunn & Bradstreet Information Services, or another recognized U.S. or Canadian debt or credit rating service, or~~

~~(B) the applicant may, at its own expense, obtain a private rating from a recognized debt rating service, or request that an independent accountant or financial advisor, mutually acceptable to the commission and the applicant, prepare an equivalent evaluation based on the financial rating methodology, criteria, and ratios for the industry as published by the above rating agencies from time to time;~~

~~(ii) two years of audited financial statements; or~~

~~(iii) a \$100,000 performance bond in an amount sufficient to cover the supplier's maximum level service obligations for a period of 12 months;~~

~~(l) most recent annual report to shareholders; and~~

~~(m) copies of standard forms or contracts used to provide service to residential and commercial (under 20300 kW) customers.~~

(2) An electricity supply broker not taking title to electricity supplies but acting as an agent or intermediary in the sale or purchase of electricity shall include the following information in an application to supply electricity:

(a) complete name of the applicant, and all names that may be used when marketing or brokering services;

(b) complete street and mailing address of the applicant's principal office;

(c) the name of the person to contact regarding the application, and the address, direct phone number, fax number and e-mail address of that person;

(d) descriptions of the activities and purposes of applicant, including:

(i) customer segments which applicant intends to serve or solicit (e.g., residential, small business (under 20 kW), commercial, industrial); and

(ii) ~~products offered to each customer segment; and~~

(iii) geographic areas, including a list of public utility and cooperative utility electric distribution service territories Montana cities, in which applicant intends to provide service or solicit customers;

(e) a list of affiliates, a corporate organization diagram, a description of each affiliate's activities and purposes and any distribution facilities owned or operated by ~~the~~an affiliate in the state of Montana and a statement on whether the facilities are the status of open and accessible on a nondiscriminatory access to those facilities for basis to all electricity suppliers; and

(f) a description of all ownership interests in any supplier operations.

(3) A broker or marketer obtaining a license pursuant to (2) of this rule may not sell retail electricity supplies in the state of Montana, be an aggregator or engage in market aggregation by taking title to electricity for sale to retail end-use customers unless it has submitted the information listed in (1) of this rule and the commission has determined the information to be complete and adequate.

RULE III. (38.5.8003) ELECTRONIC REGISTRATION

(1) Licensed electricity suppliers must complete and maintain an electronic registration form on the commission's internet web site as a condition of remaining licensed. Licensed suppliers must provide the following information electronically:

(a) the complete business name of the applicant, and all names that may be used when marketing electricity supply or brokering services to consumers;

(b) the complete street and mailing address of the applicant's principal office;

(c) the name, address, direct phone number, fax number and e-mail address of a regulatory contact person;

(d) a customer service telephone number, which must be toll-free if the supplier serves or solicits residential and commercial (under ~~20~~100 kW) customers;

(e) descriptions of:

~~(i) customer segments served (e.g., residential, small business (under 20 kW), commercial, industrial); and~~

~~(ii) principal geographic areas, including a list of Montana cities, where products are offered; and~~

(f) if serving or soliciting residential and commercial small business (under 20 kW) customers, a description of, and prices for, the standard service offer; and
(g) public utility and cooperative utility electric distribution service territories where products are offered to customers under 20 kW.

AUTH: 69-8-403, MCA; IMP: 69-8-404, MCA.

RULE IV. (38.5.8004) ANNUAL REPORTS (1) On an annual basis on or before August 1, or more frequently if the commission so orders, licensed electricity suppliers must update the information required under Rule II and file reports containing the following information for the previous 12 month period ending June 30:

(a) a descriptive list of all products and services offered to residential and commercial (under 20300 KW KW) customers (e.g., variable/formula-based electricity supply, fixed price electricity supply, environmentally oriented or "green" electricity supply, demand-side energy management products and services, metering services, billing services, other customer account services);

(b) a table with market areas, such as cities or counties, listed on one axis and the services identified in (a) on the other. Each cell in the table must contain:

(i) the date on which the product or service was first offered;

(ii) the average aggregate number of Montana residential and commercial (under 20 KW) subscribers; and

(iii) total aggregate sales in units and revenues, broken down by residential and commercial (under 20 KW); and number and average term of contracts signed with Montana residential customers in the reporting period;

(c) the number of times distribution companies had to provide emergency supply service for the reporting supplier; and

(d) total number of residential and commercial (under 20 KW) subscribers; number and average term of residential and commercial (under 20 KW) customer service contracts processed during the reporting period;

(e) a description of purchases, leases, billings and other contracts, and the services involved;

(f) a schedule of price changes and discounts by date; and

(g) a list of principal facilities, and their capacities; owned, sold or leased to, or acquired from, others; the aggregate number of Montana commercial (under 300 KW) subscribers, aggregate sales in units and revenues and average term of contracts signed with Montana commercial customers in the reporting period.

(2) A supplier may request a protective order for information provided in (1)(a) through (b) and (gd).

AUTH: 69-8-403, MCA; IMP: 69-8-404, MCA.

RULE V. (38.5.8005) STANDARD SERVICE OFFER (1) Licensed suppliers serving residential and ~~commercial~~ small business (under 20 kW) customers must maintain a standard service offer characterized by:

(a) ~~a month-to-month service contracts no longer than three months that the consumer may terminate at the end of any billing cycle after providing the supplier at least 14 days notice, except as provided in (3); and~~

(b) fixed prices per kilowatt-hour of consumption and per kW demand, as applicable, subject to (2) through (4).

(2) Standard service offer prices may vary by season and for consumption blocks of at least 400 kilowatt-hours.

(3) The standard service offer may include a budget/fixed monthly bill ~~arrangement option, in which case the contract term may extend for no more than 12 months, so long as the~~ The historical average consumption used to compute the customer's bill amount ~~is must be~~ prominently identified and explained on the monthly bill.

(4) Licensed suppliers may modify the price(s) and structure of their standard service offers, within the framework set forth in this rule, at any time by updating the supplier's electronic registration information.

(5) Licensed suppliers serving residential and ~~commercial~~ small business (under 20 ~~kW kW~~) customers may offer other services to these customer segments, in addition to the standard service offer.

AUTH: 69-8-403, MCA; IMP: 69-8-404, MCA.

RULE VI. (38.5.8006) SERVICE CONTRACT (1) All rates, terms and conditions for supply service must be provided to a retail consumer in a service contract, written in plain language. The service contract must be signed by the consumer and returned to the supplier before any service is provided. For residential and commercial (under ~~20 100 kW kW~~) electricity consumers, ~~and for residential and commercial (under 500 dkt or mcf per year) natural gas consumers~~, the front page of a service contract shall prominently and clearly disclose:

(a) the term of the contract; ~~and~~

(b) the effective price of supply service, ~~as follows:~~

~~(i) for electricity supply service, in cents per kilowatt-hour for various levels of consumption typical for the consumer's customer segment;~~

~~(ii) for natural gas supply service, in price per dkt or mcf for various levels of consumption typical for the consumer's customer segment;~~

(c) whether the price is fixed or variable and, if variable, a general description of the potential range and possible causes of price variations and the pricing formula or index, as applicable;

(d) the amount of any late payment penalties and an explanation of when they apply; ~~and~~

(e) an explanation of conditions under which the supplier will terminate the supply agreement; ~~and~~

(f) the toll-free telephone number.

(2) All customer or miscellaneous surcharges must be prominently identified and explained in the service contract.

(3) No supplier, distribution service provider, transmission service provider, system services provider, energy service provider, metering service provider, billing service provider, or other company or individual involved in the sale or delivery of electricity ~~or natural gas~~, may disclose individual consumer information to others without prior written consent from the consumer except as provided by commission rule or order.

(4) Residential and commercial (under ~~20300 kW or 500 kvt per year~~) consumers shall have a ~~452~~-day grace period from the time of entering into a service contract to notify the supplier of termination of the contract without incurring liability for supply services not consumed or taken under the contract.

(5) A consumer with a load under 300 kW may terminate a service contract without incurring liability for supply services not consumed or taken under the contract by notifying the supplier that the consumer is relocating outside the geographic area served by the supplier, or is moving to a location where the consumer is not responsible for payment of the service consumed.

(6) A supplier must notify its customers, the commission and the distribution companies in writing at least 30 days prior to ceasing business under an existing license or terminating service to an entire customer segment.

(7) The contract must clearly explain that distribution charges from the customer's local distribution utility are not part of the contract.

AUTH: 69-8-403, MCA; IMP: 69-8-404, MCA, 69-8-408, 69-8-409, 69-8-410, MCA.

4. Comments Received and Commission Responses.

General. MPTM and Commercial commented that the Commission appears over-zealous in protecting small customers and that the need for small customer protection issues should be addressed after pilot programs. MCC stated that consumer protection should be a foremost goal, but that the consumer protection should be balanced with reasonable opportunities for market entry by electricity suppliers. The Commission agreed with MCC. The Commission disagreed with MPTM and Commercial that the rules over-protect small consumers and unreasonably burden suppliers. It is appropriate for the Commission to anticipate the potential for consumer abuse and address the potential before problems arise.

MECA commented that the Commission has not acknowledged that the rules do not apply to any aspect of electric cooperative service within a cooperative's electric service territory, whether or not the cooperative has opened its system to retail customer choice; MECA agreed that the rules do apply to a cooperative's for-profit subsidiary selling power to the parent

cooperative's membership. The Commission agreed and clarified the rule accordingly.

MEIC commented that the load threshold for defining small commercial customers should be increased from 20 kW to 300 kW, while MFDA specified 350 kW. The Commission agreed. The statute uses a 300 kW threshold and the Commission has used a 300 kW threshold with respect to MPC's continuing obligation to serve (see Docket D97.7.90, Order 5986d) so the Commission will incorporate the same threshold in these rules, except with respect to the Standard Service Offer which is designed only for residential and small business customers.

MEIC, NRDC, NWEAC and RNP commented that uniform pricing and environmental disclosure (labeling) should be included in the final rules and should be promulgated as soon as possible. The Commission will continue the rulemaking process with respect to product labeling and consumer protection as soon as time permits.

Rule I. Illinova commented that requiring suppliers to serve license applications on distribution providers is unnecessary, because suppliers must enter agreements with distribution providers in order to provide energy to that area. Any information needed by the distribution provider would be provided as part of the agreement. The Commission has no discretion on this requirement; Section 69-8-404(5), MCA requires suppliers to provide all distribution service providers copies of license applications.

NRDC suggested that there should be a public hearing, or at least a public notice issued with an opportunity for public comment before the Commission issues a license to a new supplier. Notice of receipt of supplier license applications will be provided on the Commission's weekly agenda. Any party may comment on the applications or petition the Commission to reject an application. Due to the short time period within which the Commission must act on a license application, an opportunity for public hearing will not be provided.

Rule II. MPTM and Commercial commented that there is no statutory basis for requiring the specific business information in (1)(f)(i), (ii) and (iii); this information relates more to pilot programs or determining workable competition than licensing. WMG&T commented that part (1)(f)(iii) is burdensome and of questionable value. Enron suggested modifying part (1)(f) to include examples of acceptable supplier responses for customer segments served (e.g., residential, commercial, industrial), products and services offered (e.g., metering, billing, DSM, commodity), and to specify that each city served does not need to be listed if supplier serves a utility's entire service territory. However, the Commission determined that Section 69-8-403, MCA, supports the information sought in Part (1)(f) of this rule in authorizing the Commission to promulgate any rules necessary to carry out electric utility restructuring.

To carry out its statutory obligation to determine whether workable competition exists, the Commission must monitor the

structure of electricity supply markets and trends in those markets. The rule appropriately accommodates statutory licensing requirements and establishes a mechanism for obtaining some of the relevant information that will assist the Commission in monitoring the status of competition. The Commission adopted Enron's recommendation to provide examples of acceptable supplier responses. The Commission modified the rule to allow suppliers to identify the geographic areas where service is provided in terms of public and cooperative utility electric distribution service territories. The Commission removed the requirement to identify the types of products that will be offered.

Enron commented that Part (1)(g) should be modified to focus on affiliates operating in Montana, and PPL suggested focusing on affiliates with distribution facilities in the immediate geographical region. Illinova asserted that Part (1)(g) should be eliminated because it is contrary to the intent of FERC Order 888 and is of minimal value. The Commission has limited discretion with this rule. Section 69-8-404, MCA, requires license applicants to identify the purposes of each affiliate and whether an affiliate that owns or operates distribution facilities offers open, nondiscriminatory access to those facilities for suppliers. The Commission modified the rule to focus on distribution facilities owned or operated by an affiliate in the state of Montana.

MPTM commented that Part (1)(i) should be deleted and Enron suggested focusing on utility property owned in Montana. The Commission deleted Part (1)(i).

MPES suggested changing the word "verification" in part (1)(j) to "demonstration." Illinova, MECA and Commercial commented that Part (1)(j) is unnecessary because sufficient operating reserves are required as part of transmission service in accordance with Western Systems Coordinating Council and Northwest Power Pool guidelines. The Commission modified Part (1)(j) to require suppliers to agree to comply with reliability criteria established by NERC, WSCC and MAPP and demonstrate adequate supplies and reserves if the Commission requests.

MCC commented that the proposed financial integrity requirements are necessary but should be monitored and modified if they preclude market entry. Avista recommended incorporating into the financial integrity requirements credit ratings from Dunn and Bradstreet Information Services, suggested that a performance bond should be required only upon commencing service to customers other than large industrial customers, and stated that licensed suppliers should be required to conform to known system reliability criteria. MPTM commented that a performance bond of \$50,000 to \$100,000 is reasonable. Commercial asserted that the financial integrity requirements are burdensome and unworkable. The Commission modified the rule to incorporate credit ratings from Dunn and Bradstreet, allow suppliers to satisfy the financial integrity requirements by posting a \$100,000 bond, and require demonstrations of financial integrity only when serving customers with loads under 300 kW. As

modified, the financial integrity requirements are not unduly burdensome or unworkable.

MPTM commented that the Commission should not require copies of annual reports to shareholders or standard forms used to serve small customers because it is not required by the statute or necessary for licensing. Commercial commented that the Commission should not require copies of annual reports to shareholders from private companies. The Commission disagreed with these comments. The annual report to shareholders and standard forms may contain useful information for consumers with respect to suppliers' business philosophies and practices and should be publicly available. The standard forms may help the Commission spot potential marketing abuses and facilitate resolution of consumer complaints.

MPTM and MPES commented that Part (2) should be deleted because the Act does not differentiate between brokers and other electricity suppliers; the proposed rule assumes brokers do not have to financially stand behind their commitments. The Commission disagreed. The statute differentiates between two types of suppliers: those who take title to electricity and those who do not. Suppliers not taking title to electricity do not sell electricity, but act as agents or intermediaries in the sale and purchase of electricity. Therefore, the service sold by a broker is the act of facilitating purchases and sales of electricity between customers and suppliers that have title to electricity and, therefore, have electricity to sell. It is the supplier taking title to electricity with whom a customer will have a service contract, and such supplier will have to stand behind its commitments financially.

MEIC commented that Part (3) should clarify that aggregators that do not take title to electricity may obtain a license pursuant to Part (2). The Commission clarified Part 3.

NRDC commented that the proposed licensing requirements allow the Commission to monitor affiliate relationships and ensure that consumers are not harmed when suppliers fail on their contract obligations; the data required is warranted given the consumer abuses that have occurred in California and elsewhere. The Commission agreed.

Rule III. MPTM commented that Parts (e) and (f) should be eliminated or made voluntary since there is no statutory basis for these requirements. However, NRDC stated that it is completely appropriate for the Commission to require suppliers to file electronic registrations and that, in addition to descriptions of standard service offers, a description of all other services offered to small customers should be listed. The Commission agreed with NRDC, that it is appropriate for suppliers to identify the customer segments they serve and prices for the Standard Service Offer if they serve customers with loads under 20 kW. Providing this information through the electronic registration should facilitate disseminating relevant supply market information that will benefit smaller customers. However, the Commission will not require suppliers to describe all possible service offers electronically, because this may be

too burdensome and overly complicate the electronic registration process.

Rule IV. Enron, MDU, MPTM and MPES commented that Section 69-8-403(3), MCA, does not provide statutory support for annual reporting requirements. However, the statutory support for annual reporting is found in Section 69-8-404(5), MCA, which requires licensees to update license information and file annual reports with the Commission.

Enron and Commercial suggested that the Commission's intent can be met through enforcement and complaint resolution. The Commission disagreed. These mechanisms are not sufficient to fulfill the dual purposes for annual reporting: consumer protection and data which may assist in monitoring evolving market structures.

MDU, Enron and Commercial commented that the Commission should not require information on sales, customers, prices, or revenues since this information is proprietary. Enron suggested that if the Commission requires this information it should be limited to aggregated data. The Commission modified the rule to clarify that aggregate data by customer class is acceptable. The rule also allows suppliers to request protection for confidential material.

Enron asserted sections (1)(b)(i), (c), (e), (f), and (g) should be removed. WMG&T stated that Part (g) is unclear, will provide little relevant information and should be deleted. The Commission has removed the requirements in Parts (1)(b)(i), (e), (f) and (g). Suppliers should be accountable for failure to meet their obligations. Therefore, the Commission continues to require suppliers to report occasions when distribution utilities have to provide emergency service.

EWB commented that the information required by this rule is burdensome, will deter small firms from entering the market and will increase costs of serving small customers. The Commission reduced the reporting burdens in response to previous comments. The reporting requirements, as modified, strike an appropriate balance between protecting consumers and collecting appropriate data related to market structure and minimizing entry barriers. As markets develop, the Commission can take further steps to reduce entry barriers.

MPES commented that the Commission has no authority to require the information in (1)(b), (d), (e) and (f); that the rule disregards the intent of SB 390 to deregulate supply; and that the required information seems related to the Commission's determination of workable competition, but that determination does not require on-going monitoring of competition. The Commission has removed the requirements in (1)(e) and (f). The Commission disagreed that its determination of workable competition does not require an on-going monitoring of competition; if markets appear to be trending toward stronger competition the Commission's determination may be different than if competition starts strong but diminishes, or if competition is slow to develop during the transition period. As stated in response to comments on Rule II, the Commission has authority to implement

rules necessary to implement the statute, including the statutory requirement to evaluate market structures.

MPTM commented that the Commission should not collect information for determining whether there is workable competition through rules because the Transition Advisory Committee (TAC) and utilities' pilot program reports will provide the information necessary to evaluate workable competition. Additionally MPTM commented that the Commission's rules are burdensome and Parts (1)(a), (b), (d), (e), (f) and (g) should be deleted. Parts (1)(e), (f) and (g) were removed in response to previous comments. The Commission disagreed that the TAC and utilities will have all information on suppliers necessary to fully evaluate the status of workable competition. No party to this proceeding has identified the scope of data necessary for such an evaluation or suggested how the TAC or utilities will come to possess these data. Further, the TAC is charged with evaluating effective competition while the Commission is charged with evaluating workable competition; the extent to which these different responsibilities require different data is not clear. Finally, the information required by this rule, as modified, is still not sufficient for a comprehensive evaluation of workable competition, but may help illuminate significant impediments to workable competition, should they arise.

MFDA commented that suppliers should be required to file the annual report information for customers less than 350 kW and MEIC stated that the threshold for annual reporting should be increased to 300 kW. The Commission responded to this issue in its General Comments.

MECA commented that the Commission should streamline the annual reporting requirements and only impose information reporting requirements absolutely necessary for consumer protection. The Commission addressed this comment through its responses to previous comments.

NRDC suggested requiring suppliers to submit samples of their promotional material. The Commission will address supplier marketing in the next phase of this rulemaking.

MDU commented that information collected through this rule is not part of a contested case so a protective order is unworkable. The Commission disagreed. The Commission has issued protective orders for utility annual report information in the past and can do so for supplier annual reports to the extent necessary.

Commercial suggested applying the annual reporting requirements only to the incumbent utility affiliate supplier. The Commission was not convinced that such an approach is sufficient because of the potential for tight oligopolies and anti-competitive price leading behavior.

MCC commented that if the Commission is to obtain information on suppliers it must do so through rules, since a Commission order on pilot programs will not apply to suppliers; the Commission should retain the requirements in the proposed annual reporting section, consumer protection must remain a foremost goal in establishing rules. The Commission agreed, as reflected in the above responses.

Rule V. WMG&T commented that the standard service offer will not be the cheapest offer, it may be the most expensive given the characteristics the Commission proposes to require. The Commission agreed that prices for the standard service offer may be higher than for other service offers. The standard service offer was not designed to be the cheapest option but one which has familiar characteristics and low risk for consumers.

MPES stated that the minimum term of the standard service offer may strain the distribution service provider's administration of the service. The Commission modified the rule to allow longer service contracts.

MPES and MDU asserted that budget billing is not possible with a month-to-month service contract and suggested a term of one year. MEIC, NRDC, NWECC, RNP and MCC commented that a year-long contract for budget billing is reasonable. The Commission modified the rule to allow one-year contracts with the budget billing option.

MPTM commented that the rule should be deleted entirely because it is premature; it is not known if affordable electricity will be a problem. The Commission disagreed. As stated in its response to WMG&T, the purpose of the rule is not to address affordable electricity. Nevertheless, the availability of a standard service offer combined with the price disclosure requirements in the electronic registration rule may exert competitive pressures on suppliers offering services to small consumers.

MDU asserted that the Commission should clarify that suppliers are free to offer other contractual terms in addition to the standard service offer. However, Part (5) of the proposed rule already makes this clear.

Rule VI. Enron, WMG&T, MPTM and MDU commented that the 45-day grace period is inappropriate. The Commission replaced the 45-day provision with a three-day provision.

MPTM suggested that suppliers should be able to provide the pricing formula to satisfy the price disclosure requirements. The Commission determined that suppliers should illustrate an effective price per kWh for customers based on typical use for that customer type. This will facilitate straightforward comparisons of contract offers from various suppliers. The pricing formula should be provided when the actual price varies according to a formula or price index. The Commission modified Part (1)(c) of this rule.

MPTM and MDU commented that references to natural gas supply should be deleted. The Commission deleted these references.


MPTM stated that large customers do not need the protection in part (5). The Commission modified the rule to apply to customers with loads under 300 kW.

MECA suggested that suppliers must be able to release customer information for credit purposes. The Commission disagreed that suppliers should be able to release such information as a matter of course. A supplier may include language in

service contract, which must be signed by the customer, indicating that certain information will be released.

MECA suggested that Part (5) should be modified to prevent customers from escaping their payment obligations by moving to another location. Part (5) does not allow a customer to escape any payment obligations, only the responsibility for products and services not taken from the supplier.

NRDC recommended requiring the service contract to state that the contract is for supply service and that other rates from the local distribution company apply. The contract should also include a toll-free customer service telephone number. The Commission modified the rule to incorporate these suggestions.



Dave Fisher, Chairman

CERTIFIED TO THE SECRETARY OF STATE July 6, 1998



Reviewed By Robin McHugh

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE
MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject
Matter | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1998. This table includes those rules adopted during the period April 1, 1998 through June 30, 1998 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1998, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1996, 1997 and 1998 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

GENERAL PROVISIONS, Title 1

- 1.2.419 Filing, Compiling, Printer Pickup and Publication of the Montana Administrative Register, p. 1913, 2301

ADMINISTRATION, Department of, Title 2

- I-VI and other rules - Payroll Administration - Decedent's Warrants, p. 1855, 2278
- 2.13.201 and other rules - 9-1-1 Emergency Telephone Systems, p. 1691, 2178
- 2.21.1412 and other rules - Employment Preference for Persons with Disabilities, p. 1845, 2277, 157
- 2.21.3704 and other rules - Recruitment - Selection, p. 1861, 2279
- 2.21.6401 and other rules - Performance Appraisal, 1452
- (Public Employees' Retirement Board)
- I Members of Retirement Systems who may Elect Coverage under the Guaranteed Annual Benefit Adjustment, p. 1843, 2280
- 2.43.302 and other rules - Definitions used in Rules and Statutes - Actuarial Data - Mailing for Non-profit Groups, p. 376, 920

(State Compensation Insurance Fund)

- I and other rules - Employers' Liability - Premium Rates, p. 1697, 158
- I&II Individual Loss Sensitive Dividend Distribution Plan, p. 695, 1273

AGRICULTURE, Department of, Title 4

- I Weed District Supervisor Training, p. 811
- 4.5.203 Category 2 Noxious Weeds, p. 809
- 4.5.302 and other rules - Certification of Noxious Weed Seed Free Forage, p. 1546
- 4.9.401 Wheat and Barley Assessment - Refunds, p. 807, 1696
- 4.12.3801 and other rule - Grading Standards for Mustard Seed, p. 1869, 345
- 4.13.1001A Grain Fee Schedule, p. 698, 1276
- 4.13.1004 and other rules - Change of Implementing Statutes, p. 1867, 346

STATE AUDITOR, Title 6

- I Fidelity Bond, p. 1706, 2180
- I-XV Annuity Disclosure and Sales Illustrations, p. 382
- 6.6.302 and other rules - Replacement of Life Insurance, p. 395
- 6.6.2503 and other rules - Group Health Insurance in the Large and Small Group Markets - Individual Health Insurance, p. 1, 1698
- 6.6.4001 Valuation of Securities other than those Specifically Referred to in Statutes, p. 47, 528
- 6.6.5101 Plan of Operation for the Small Employer Health Reinsurance Program, p. 814, 1406

(Classification Review Committee)

- 6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 Edition, p. 599, 1407

COMMERCE, Department of, Title 8

- 8.63.101 and other rules - Passenger Tramways, p. 1960, 643
- (Board of Alternative Health Care)
- 8.4.405 and other rules - Naturopathic Physician Continuing Education Requirements - Licensing by Examination - Midwives Continuing Education Requirements - Natural Substances Formulary List, p. 2134, 529
- 8.4.510 Licensure of Out-of-State Applicants, p. 515, 921
- (Board of Architects)
- 8.6.405 and other rules - Licensure of Out-of-State Applicants - Examinations - Individual Seal - Renewals - Unprofessional Conduct - Fees - Architect Partnerships - Screening Committee - Solicitation of

Business by Architects from other States - Use of Title, p. 2142, 449

(Board of Athletics)

8.8.2802 and other rules - Definitions - Prohibitions - Physical Examinations - Physician Requirements - Elimination-type Events - Point System - Scoring - Promoter-Matchmaker - Medical Advisor, p. 1053

(Chemical Dependency Counselor Certification Program)

I Unprofessional Conduct, p. 1305

I-XVIII Chemical Dependency Counselor Certification, p. 602, 1408

(Board of Chiropractors)

8.12.601 and other rules - Applications - Examination Requirements - Temporary Permit - Renewals - Unprofessional Conduct - Endorsement, p. 49, 1494

(Board of Clinical Laboratory Science Practitioners)

8.13.303 and other rules - Fees - Renewal - Inactive Status - Reactivation of License, p. 54

(Board of Cosmetologists)

8.14.401 and other rules - Practice of Cosmetology - Electrology - Manicuring - Esthetics, p. 1709, 2181, 159

8.14.803 and other rules - Applications for Examination - Temporary Permits - Application of Out-of-state Cosmetologists, Manicurists, Estheticians - Transfer Students - Continuing Education - Salons - Booth Rental Licenses - Restrictions of Temporary Permits, p. 1456

8.14.814 Fees - Initial, Renewal, Penalty and Refund, p. 1226

(Boilers, Blasters and Crane Operators Program)

8.15.103 and other rules - Construction Blasters - Hoisting Operators - Crane Operators - Boiler Engineer Training, p. 2149, 453, 1155

(Board of Dentistry)

8.16.405 and other rule - Fees - Dentist Licensure by Credentials, p. 2157, 922

(State Electrical Board)

8.18.402 and other rules - Applications - General Responsibilities - Continuing Education - Screening Panel, p. 1625, 2161, 455

(Fire Prevention Program)

8.19.108 and other rules - Practice of Selling, Servicing or Installing Fire Prevention Systems, p. 2163, 458

-1948-

(Board of Hearing Aid Dispensers)

- 8.20.401 and other rules - Traineeship Requirements and Standards - Examinations - Definitions - Transactional Document Requirements, p. 1743, 2281

(Board of Horse Racing)

- 8.22.502 and other rules - Parimutuel Wagering - Annual License Fees - Timers - Jockeys - Trainers - General Requirements - Weight-Penalties and Allowances - Exacta Betting - Requirements of Licensee - Bonus for Owners of Montana Breds, p. 615, 1156

(Board of Landscape Architects)

- 8.24.409 Fee Schedule, p. 1058

(Board of Medical Examiners)

- 8.28.414 and other rules - Physician Temporary Certificate - Fee Schedule - Acupuncture - Podiatry - Nutrition Practice Rules, p. 1746, 2197

(Board of Funeral Service)

- 8.30.402 and other rules - Applications - Licensure of Out-of-State Applicants - Examination - Fee Schedule - Sanitary Standards - Transfer or Sale of Mortuary License - Crematory Facility Regulation - Processing of Cremated Remains - Board Meetings - Disclosure of Funeral Arrangements - Methods of Quoting Prices - Itemization - Disclosure Statement - Cemetery Regulation - Federal Trade Commission Regulations - Disclosure Statement on Embalming, p. 1228

(Board of Nursing)

- 8.32.306 Application for Recognition, p. 1308
8.32.1408 Standards Relating to the Licensed Practical Nurse's Role in Intravenous (IV) Therapy, p. 623

(Board of Nursing Home Administrators)

- 8.34.414A Application for Licensure, p. 1423, 161

(Board of Occupational Therapists)

- 8.35.408 and other rule - Unprofessional Conduct - Continuing Education, p. 1551

(Board of Optometry)

- 8.36.409 and other rules - Fees - Licensure of Out-of-State Applicants - Continuing Education Requirements - Approved Programs or Courses, p. 235, 925

(Board of Outfitters)

- I Watercraft Identification, p. 2224, 740
8.39.505 and other rules - Outfitter Applications and Renewals - Guide or Professional Guide Licenses and Qualifications - Safety Provisions - Unprofessional Conduct, p. 816

- 8.39.804 Review of New Operations Plan and Proposed Expansion
 of Net Client Hunting Use under an Existing
 Operations Plan, p. 1463
- (Board of Pharmacy)
- 8.40.404 and other rules - Fees - Internship Regulations -
 Pharmacy Technicians, p. 1628, 2060, 163
- (Board of Physical Therapy Examiners)
- 8.42.402 and other rules - Fees - Temporary Licenses -
 Continuing Education, p. 2169, 460
- (Board of Plumbers)
- 8.44.402 and other rule - Definitions - Fees, p. 1751, 2226,
 1158
- (Board of Professional Engineers and Land Surveyors)
- Establishment of a Negotiated Rulemaking Committee
 on Fire Extinguisher Systems - Need for Engineering
 Services, p. 700
 Establishment of a Negotiated Rulemaking Committee
 on Wastewater Treatment Systems - Need for
 Engineering Services, p. 703
- 8.48.507 Classification of Experience, p. 1504, 534
- (Board of Psychologists)
- 8.52.604 and other rules - Application Procedures -
 Continuing Education - Unprofessional Conduct -
 Ethical Practice of Psychology - Unprofessional
 Conduct, p. 57, 927
- (Board of Public Accountants)
- 8.54.408 and other rules - Education Requirements - Fees -
 Enforcement Against Licensees, p. 2172, 463
- (Board of Radiologic Technologists)
- 8.56.402 and other rules - Applications - Continuing
 Education - Permit Application - Types -
 Unprofessional Conduct, p. 1241
- (Board of Real Estate Appraisers)
- 8.57.407 and other rules - Qualifying Education Requirements
 for Licensed Appraisers - Residential Certification
 - General Certification - Continuing Education - Ad
 Valorem Tax Appraisal Experience, p. 238, 744
- (Board of Realty Regulation)
- 8.58.413 Reactivation of Licenses, p. 407, 1496
- 8.58.419 and other rules - Grounds for License Discipline -
 General Provisions - Unprofessional Conduct -
 Grounds for License Discipline of Property
 Management Licensees - General Provisions -
 Unprofessional Conduct, p. 821

-1950-

(Board of Respiratory Care Practitioners)

- 8.59.506 and other rule - Fees - Continuing Education - Unprofessional Conduct, p. 1553

(Board of Sanitarians)

- 8.60.408 and other rules - Minimum Standards for Licensure - Continuing Education, p. 824, 1497, 1718

(Board of Speech-Language Pathologists and Audiologists)

- 8.62.204 and other rules - Examinations - Schedule of Supervision - Continuing Education, p. 1465

(Board of Veterinary Medicine)

- 8.64.401 and other rules - Definitions - Application Requirements - Temporary Permits - Support Personnel, p. 1633, 464

(Building Codes Division)

- 8.70.101 and other rules - Building Codes Division, p. 1310
8.70.101 and other rules - Building Codes Bureau, p. 1509, 2061, 164

(Weights and Measures Bureau)

- 8.77.101 and other rules - Voluntary Registration of Servicepersons and Service Agencies - Uniform Regulation of National Type Evaluation, p. 517, 1498

(Consumer Affairs Division)

- I-XX New Motor Vehicle Warranty Act, p. 68, 746, 930
8.78.401 and other rules - Proprietary Schools, p. 2016, 165

(Banking and Financial Institutions Division)

- I-VIII Annual Fees - Examinations - Reports by the Foreign Capital Depositories, p. 1871, 2283
8.80.110 Fees for the Approval of Point-of-Sale Terminals, p. 1556
8.80.307 Dollar Amounts to Which Consumer Loan Rates are to be Applied, p. 1558

(State Banking Board)

- I-XI Application Procedure for a Charter - Notice of Hearing - Grounds for Denial - Procedural Rules for Determination - Procedural Rules for Discovery and Hearing - Application Charter Fee for the Foreign Capital Depositories, p. 1882, 2286
8.87.401 and other rule - Organization of the State Banking Board, p. 1560

(Local Government Assistance Division)

- I Administration of the 1998 Treasure State Endowment Program (TSEP), p. 2228, 758, 932
8.94.3707 and other rule - 1991 Federal Community Development Block Grant Program - Administration of the 1998 Federal Community Development Block Grant Program, p. 2230, 751

-1951-

- 8.94.3714 Administration of the 1998 Federal Community
Development Block Grant Program, p. 706
8.94.4102 and other rule - Single Audit Act, p. 1355

(Economic Development Division)

- 8.99.401 and other rules - Microbusiness Advisory Council -
Microbusiness Finance Program, p. 1547, 466
8.99.506 and other rule - Microbusiness Finance Program,
p. 1468

(Board of Housing)

- 8.111.402 and other rules - Reverse Annuity Mortgage (RAM)
Loans, p. 92, 644

(Travel Promotion and Development Division)

- 8.119.101 Tourism Advisory Council, p. 526, 933

(Burial Preservation Board)

- I-VI Unmarked Burials within the State of Montana,
p. 2233, 478

EDUCATION, Title 10

(Superintendent of Public Instruction)

- 10.16.2215 and other rules - School Funding - Budgeting -
Transportation, p. 1244, 1719

(Board of Public Education)

- 10.55.602 and other rules - Content and Performance Standards
for Reading and Mathematics, p. 1358
10.57.204 Teacher Certification - Experience Verification,
p. 826
10.57.215 Teacher Certification - Renewal Requirements, p. 836
10.57.220 Teacher Certification - Recency of Credit, p. 830
10.57.301 Teacher Certification - Endorsement Information,
p. 838
10.57.301 Teacher Certification - Endorsement Information,
p. 832
10.57.301 Teacher Certification - Endorsement Information,
p. 1962, 347
10.57.401 Teacher Certification - Class 1 Professional
Teaching Certificate, p. 834
10.57.403 Teacher Certification - Administrative Certificate,
p. 840
10.57.404 Teacher Certification - Class 4 Vocational
Certificate, p. 409, 934
10.57.406 Teacher Certification - Class 6 Specialist
Certificate, p. 828
10.58.527 Teacher Certification - Areas of Permissive Special
Competency, p. 1964, 348
10.65.101 and other rules - Hours and Days of Instruction -
Pupil Instruction-Related Days, p. 1966, 349

(State Library)

- 10.102.4001 Reimbursement to Libraries for Interlibrary Loans,
p. 1262, 1563

(Montana Historical Society)

- I-XVI Procedures that State Agencies must Follow to Protect Heritage Properties and Paleontological Remains - General Procedures which the State Historic Preservation Office must Follow in Implementing its General Statutory Authority, p. 411

FISH, WILDLIFE, AND PARKS, Department of, Title 12

- I-III Angler Education Events, p. 626
12.3.202 Establishing a New Class of License Agent who may Receive Compensation from Clients for Preparation of Hunting License and Permit Applications, p. 629

(Fish, Wildlife, and Parks Commission)

- I Defining Guiding Services for Use of Class B-10 and B-11 Licenses which are Outfitter-sponsored Nonresident Big Game Combination Licenses, p. 1753, 166
I-VIII Creating "Primitive Fishing Access Site Designation" where Site Development and Maintenance are Limited, p. 423
12.6.901 Limiting the Use of Motor-propelled Water Craft to Ten Horsepower on Lake Helena, p. 95, 1160

ENVIRONMENTAL QUALITY, Department of, Title 17

- I&II and other rules - Underground Storage Tanks - Assessment of Administrative Penalties for Violations of the Underground Storage Tank Act - Issuance of Emergency Underground Storage Tank Permits, p. 842, 1739
I-VI CECRA - Listing, Delisting and Ranking Rules for Comprehensive Environmental Cleanup and Responsibility Act (CECRA) Facilities, p. 1264

(Board of Environmental Review)

- I Water Quality - Temporary Water Standards for Daisy Creek, Stillwater River, Fisher Creek, and the Clark's Fork of the Yellowstone River, p. 1652, 1872, 2211, 1049, 2502, 534, 1636, 631
I-IV Water Quality - Assessment of Administrative Penalties for Violations of Water Quality Act, p. 263, 940
I-VI and other rule - Water Quality - Cross-connections in Drinking Water Supplies, p. 257, 958, 1277
16.2.501 Major Facility Siting Act - Definitions, p. 279, 935
17.8.101 and other rules - Air Quality - Definition of Volatile Organic Compounds - Incorporations by Reference - Incorporating by Reference Maximum Achievable Control Technology Standards for Primary Aluminum Reduction Plants, p. 851, 1725
17.8.220 Air Quality - Settled Particulate Matter, p. 1577
17.8.220 Air Quality - Settled Particulate Matter, p. 849

-1953-

- 17.8.504 and other rule - Air Quality - Application and Operation Fees, p. 1574
- 17.8.514 Air Quality - Air Quality Major Open Burning Fees, p. 859, 1729
- 17.8.1201 and other rules - Air Quality - Air Quality Operating Permit Program, p. 2018, 350
- 17.30.201 Water Quality - Permit and Authorization Fees, p. 1566
- 17.30.502 Water Quality - Montana Mixing Zone - Definitions, p. 847
- 17.30.610 Water Quality - Montana Surface Water Quality Standards, p. 857
- 17.30.716 Water Quality - Categorical Exclusions, p. 274, 936
- 17.30.1022 Water Quality - Montana Ground Water Pollution Control System Requirements, p. 271, 1164
- 17.36.801 and other rules - Subdivisions - Increasing the Fees and Reimbursements to Local Governing Bodies, p. 282, 646
- 17.38.101 and other rules - Public Water Supply - Updating Public Water Supply and Public Sewage System Rules, p. 242, 1167, 1730
- 26.4.1301 Reclamation - Modification of Existing Permits, p. 281, 963
- (Petroleum Tank Release Compensation Board)
- I Applicable Rules Governing the Operation and Management of Tanks - Interpretation of 75-11-308(1)(e), MCA, p. 1755, 479
- 17.58.342 Eligible Reimbursement for Per Diem Expenses, p. 1757, 2198

TRANSPORTATION, Department of, Title 18

- I-VI Seizure of Improperly Imported Motor Fuels, p. 97, 964
- 18.8.101 Definition of F.O.B. Factory List Price and F.O.B. Port-of-Entry List Price as it Relates to the Motor Carrier Services Program, p. 1969, 170
- 18.8.509 and other rules - Motor Carrier Services Program, p. 1638, 171

CORRECTIONS, Department of, Title 20

- I-VII Siting and Construction Standards of Private Correctional Facilities in Montana, p. 1895, 172, 1175
- I-X Siting, Establishment, and Expansion of Pre-release Centers or Juvenile Transition Centers in the State of Montana, p. 428
- 20.9.501 and other rules - Licensure of Youth Detention Facilities, p. 289

JUSTICE, Department of, Title 23

- I-VII Valuation and Taxation of Light Motor Vehicles -
Imposition of Fees in Lieu of Tax on Buses, Heavy
Trucks, Truck Tractors and Trailers, p. 1901, 2292
23.16.101 and other rules - Public Gambling, p. 2023, 1176
23.17.108 Establishment of a Tuition Fee at the Montana Law
Enforcement Academy, p. 709, 1279

LABOR AND INDUSTRY, Department of, Title 24

- 24.16.9003 and other rules - Montana's Prevailing Wage Rates -
Establishing Revised Rates for Building Construction
Services, p. 1581
24.16.9003 and other rule - Prevailing Wage Rates -
Establishing Rates for Building Construction
Services, p. 718, 1060, 1740
24.21.414 Wage Rates for Certain Apprenticeship Programs,
p. 1586
24.21.414 Adoption of Wage Rates for Certain Apprenticeship
Programs, p. 723
24.28.101 and other rule - Workers' Compensation Mediation,
p. 1061
24.29.207 and other rules - Workers' Compensation Matters,
p. 1064
24.29.1425 and other rules - Hospital Rates Payable in Workers'
Compensation Cases, p. 433, 759
24.30.102 Occupational Safety and Health Standards for Public
Sector Employment, p. 439
24.30.1302 Safety Standards for Coal Mines, p. 443, 760, 966
24.33.121 and other rules - Operation of the Construction
Contractor Registration Program, p. 1078
24.35.111 and other rules - Independent Contractor Exemption,
p. 1082
24.35.202 and other rules - Independent Contractor Central
Unit, p. 1086

(Workers' Compensation Court Judge)

- I Procedural Rule - Motion for Consideration, p. 1579
24.5.101 and other rules - Workers' Compensation Court,
p. 711, 1281

LIVESTOCK, Department of, Title 32

(Board of Livestock)

- I-VI and other rule - Equine Infectious Anemia -
Importation of Animals into Montana, p. 1090
I-VIII Scrape - Quarantine - Reporting Requirement -
Identification - Disclosure of Information -
Availability for Inspection - Sample Collection -
Identification Methodology, p. 1589
32.3.212 Brucellosis Vaccination(s), p. 1641, 656
32.24.301 Emergency Amendment - Alteration of the Milk Pricing
Rule as it Pertains to the Butter Fat Component,
p. 1742

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- I-IV Marketing of Water at State Water Projects, p. 728, 1415
- I-XX Financial Assistance Available Under the Drinking Water State Revolving Fund Act, p. 861, 1412
- 36.24.104 Types of Bonds - Financial and Other Requirements in the Wastewater Revolving Fund Act, p. 102, 538

(Board of Land Commissioners and Department of Natural Resources and Conservation)

- I Grazing of Domestic Sheep on State Tracts within or Adjacent to Occupied Bighorn Ranges, p. 731, 1414
- 26.2.703 and other rules - Transfer from the Department of State Lands - Citizen Participation in Agency Decisions, p. 726, 1282
- 26.5.101 and other rules - Transfer from the Department of State Lands - Resource Development Division - Establishment, Administration and Management of State Natural Areas, p. 761

(Board of Oil and Gas Conservation)

- 36.22.1303 and other rules - Well Plugging Requirement - Plugging and Restoration Bond - Financial Responsibility, p. 1646, 2038, 482
- 36.22.1308 Plugging and Restoration Bond, p. 636, 1745

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- Establishment of a Negotiated Rulemaking Committee on Bed and Breakfast Establishments, p. 1774
- Establishment of a Negotiated Rulemaking Committee on Guest Ranches and Outfitting and Guide Facilities, p. 1778
- I and other rules - Medicaid Outpatient Drugs, p. 2241, 495
- I-VIII and other rules - Rural Health Clinics and Federally Qualified Health Centers, p. 886
- I-XV and other rules - Families Achieving Independence in Montana, p. 1592
- I-XVIII Tattoos, p. 108, 967
- I-XXI and other rules - Youth Care Facilities, p. 1759, 489
- I-XXI and other rule - Minimum Standards for Mental Health Centers, p. 1556, 539
- I-XXIII and other rules - Child Support Enforcement Guidelines, p. 317, 447
- 11.5.101 and other rules - Transfer from the Department of Family Services - Protective Services, p. 657
- 11.5.401 and other rules - Transfer from the Department of Family Services - Supplemental Security Income Payments, p. 2294
- 11.6.101 and other rules - Transfer from the Department of Family Services - Adoptive Services, p. 659

- 11.7.105 and other rules - Transfer from the Department of Family Services - Foster Care Services, p. 2250, 488
- 11.9.101 and other rules - Transfer from the Department of Family Services - Residential Alcohol and Drug Treatment for Indigent Juveniles, p. 2295
- 11.11.101 and other rules - Transfer from the Department of Family Services - Licensure of Child Placing Agencies, p. 661
- 11.12.101 and other rules - Transfer from the Department of Family Services - Youth Care Facilities, p. 663
- 11.16.101 and other rules - Transfer from the Department of Family Services - Licensure of Adult Foster Care Homes - Community Homes for Persons with Developmental Disabilities - Community Homes for Persons with Physical Disabilities, p. 667
- 16.24.414 Health Supervision and Maintenance for Day Care Centers, p. 2254, 762
- 16.28.101 and other rules - Control of Sexually Transmitted Diseases, p. 1690
- 16.38.307 Laboratory Fees for Clinical Analysis, p. 105, 671
- 20.3.201 and other rules - Transfer from the Department of Corrections - Chemical Dependency Treatment Program, p. 1502
- 20.3.502 and other rules - Chemical Dependency Educational Courses, p. 2040, 351
- 20.14.104 and other rules - Transfer from the Department of Corrections - Mental Health Inpatient Facilities, p. 1505
- 20.14.201 and other rules - Transfer from the Department of Corrections - Veterans' Facilities, p. 1748
- 20.14.501 and other rules - Certification of Mental Health Professionals, p. 1485
- 46.8.1510 Exceptions to Placement Rules for Developmental Disabilities Service Positions, p. 2045, 176
- 46.12.303 and other rules - Medicaid Coverage - Reimbursement of Various Medical Items and Services, p. 1470
- 46.12.303 and other rules - Medicaid Billing and Reimbursement for Podiatry, Therapy, Audiology, Clinic, Family Planning, Organ Transplant, Optometric, Eyeglasses, Home and Community Speech Pathology and Audiology, Physician, and Mid-level Practitioner Services, p. 129, 676
- 46.12.802 and other rule - Medicaid Durable Medical Equipment, p. 2257, 497
- 46.12.1221 and other rules - Medicaid Coverage - Reimbursement of Nursing Facility Services, p. 1097, 1749
- 46.12.3001 and other rules - Medicaid Eligibility, p. 1660
- 46.13.303 and other rules - Low Income Energy Assistance, p. 1649, 2296
- 46.14.301 and other rule - Low Income Weatherization Assistance Program (LIWAP), p. 639, 1416
- 46.18.305 and other rules - Families Achieving Independence in Montana's (FAIM) Work Readiness Component (WORC) - Other Employment and Training Activities, p. 1676

-1957-

- 46.30.507 Child Support Enforcement Distributions of Collections, p. 1395
46.30.1605 and other rules - Child Support and Enforcement Services Fee Schedule, p. 310, 1777

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-VI Electricity Supplier Licensing and Reporting Rules, p. 1121
I-IX Montana Interim Universal Access Program, p. 1253, 1921, 181
I-XI IntraLATA Equal Access Presubscription, p. 2048, 983
I-XIII Natural Gas Utility Restructuring and Customer Choice Act, Title 69, Chapter 3, Part 14, MCA - Standards of Conduct - Anticompetitive and Abusive Practices - Supplier Licensing - Universal System Benefits, p. 2263, 1506
38.4.105 and other rules - Railroads, p. 342, 1184
38.5.1010 and other rules - Pipeline Safety, including Drug and Alcohol Testing - National Electric Safety Code, p. 1972, 180
38.5.1502 and other rule - Utility to Consumer Notice of Proposed Tariff Changes, p. 1488

REVENUE, Department of, Title 42

- I-III Income Tax Credit for the Preservation of Historic Buildings, p. 1980, 184
I-IV Family Education Savings Act, p. 2175, 680
42.2.601 Tax Assessment Review Process, p. 1814, 2199
42.11.244 and other rules - Liquor License Transfers, p. 1139
42.11.301 and other rules - Commissions Earned by Agents Operating Liquor Stores in Montana, p. 1132
42.12.132 Management Agreements, p. 1491
42.14.102 and other rules - Accommodation Tax, p. 1983, 182
42.15.506 and other rule - Elderly Homeowner Renter Credit, p. 1975, 183
42.15.507 and other rules - Charitable Endowment Funds, p. 150, 1004
42.15.601 and other rules - Medical Care Savings Account, p. 2273, 1015
42.19.1203 and other rules - Industrial Property Trend - New Industrial Property - Personal Property Trended Depreciation Schedules, p. 1782, 2297
42.20.160 and other rules - Forest Classification and Appraisal for Property Tax, p. 1128
42.21.113 Personal Property Schedules, p. 1153, 1525
42.31.131 Cigarette Tax Refunds/Distributions, p. 148, 681
42.31.331 Tobacco Rules - Sales from Vending Machines, p. 733, 1417
42.31.401 Emergency Telephone Service, p. 1978, 185
42.38.101 and other rules - Unclaimed Property, p. 1399

SECRETARY OF STATE. Title 44

- I Schedule of Fees for the Centralized Voter File,
 p. 735, 1283
- 1.2.419 Filing, Compiling, Printer Pickup and Publication of
 the Montana Administrative Register, p. 1913, 2301
- 44.9.101 and other rules - Mail Ballot Elections, p. 737,
 1285

(Commissioner of Political Practices)

- 44.10.331 Limitations on Receipts from Political Committees,
 p. 1986, 186

-1959-

CROSS REFERENCE INDEX

Montana Code Annotated
to
Administrative Rules of Montana

January 1998 - June 1998

<u>MCA</u>	<u>Rule or A.G.'s Opinion No.</u>	<u>Register Page No.</u>
Title 2, Ch. 3	Opinion No. 13	1030
2-3-103	Rule II (Commerce - Chemical Dependency Counselors)	602
2-3-103, 104	Opinion No. 13	1030
2-3-111, 112	Opinion No. 13	1030
2-3-201 - 203	Opinion No. 13	1030
2-4-103	6.6.8301	599
2-4-201	Rule I (Commerce - Chemical Dependency Counselors)	602
2-4-201	Rule I (Labor - Workers' Compensation Court)	711
2-4-201	Rule I (Labor - Workers' Compensation Court)	1579
2-4-201	Rule VIII (DPHHS)	886
2-4-201	24.5.101, 301, 303, 323, 326, 330, 348, 350	711
2-4-201	24.29.207	1064
2-4-201	26.2.703 - 707	726
2-4-201	26.2.703 - 707	1282
2-4-307	24.16.9003	718
2-4-307	24.16.9007	1581
2-4-501	Declaratory Ruling (DNRC)	194
2-4-501	Declaratory Ruling (Commerce - Board of Nursing)	770
2-4-611	24.35.213	1086
2-4-623	24.35.213	1086
2-5-104	Notice of Negotiated Rulemaking (Commerce - Board of Professional Engineers and Land Surveyors)	700
2-5-104	Notice of Negotiated Rulemaking (Commerce - Board of Professional Engineers and Land Surveyors)	703
2-5-106	Notice of Negotiated Rulemaking (Commerce - Board of Professional Engineers and Land Surveyors)	700
2-5-106	Notice of Negotiated Rulemaking (Commerce - Board of Professional Engineers and Land Surveyors)	703
Title 2, Ch. 6, Pt. 6	24.29.207	1064
2-6-109	2.43.308, 309	376
2-7-514	8.94.4102	1355
2-7-517	8.94.4103	1355

-1960-

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
2-15-404	Rule I (Secretary of State)	735
2-15-404	44.3.1101	1283
2-15-1816	8.119.101	526
2-18-102	2.21.6401 - 6403, 6411, 6413 - 6415	1452
4-6-116	46.36.1532	317
7-1-201	Opinion No. 11	1018
7-5-2122	Opinion No. 13	1030
7-5-2125	Opinion No. 13	1030
Title 7, Ch. 6, Pts. 23, 42	Opinion No. 11	1018
7-6-604	Opinion No. 11	1018
7-6-2314, 2315	Opinion No. 11	1018
7-6-2325	Opinion No. 11	1018
7-6-2348	Opinion No. 11	1018
7-22-2101	4.5.203	809
7-22-2103	Opinion No. 11	1018
7-22-2109	Opinion No. 11	1018
7-22-2130	Rule I (Agriculture)	811
7-22-2141 - 2143	Opinion No. 11	1018
7-22-2145	Opinion No. 11	1018
7-22-2411	Opinion No. 11	1018
7-22-2415	Opinion No. 11	1018
7-22-2431, 2432	Opinion No. 11	1018
13-1-202	44.9.101, 313, 401, 402	737
13-2-115	Rule I (Secretary of State)	735
13-2-115	44.3.1101	1283
13-19-101	44.9.101	737
13-19-105	44.9.313, 401, 402	737
13-37-114	44.10.331	186
13-37-218	44.10.331	186
15-1-201	42.20.165, 167, 168	1128
15-1-201	42.21.113	1153
15-1-503	42.31.131	148
15-6-136	42.21.113	1153
15-23-108	42.21.113	1153
15-30-165	Rules I - III, V, VI (Revenue)	150
15-30-165	42.15.507	150
15-30-165	42.15.507, 513 - 515	1004
15-30-166	Rules II, IV - VI (Revenue)	150
15-30-166	42.15.507	150
15-30-166	42.15.507, 514, 516	1004
15-30-167	Rules I - VI (Revenue)	150
15-30-167	42.15.507	150
15-30-167	42.15.507, 513 - 516	1004
15-30-305	Rules I - V (Revenue)	150
15-30-305	42.15.507	150
15-30-305	42.15.507, 513 - 516	1004

13-7/16/98

Montana Administrative Register

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
15-30-305	42.15.602, 604	1015
15-31-161, 162	Rules I - VI (Revenue)	150
15-31-161, 162	42.15.507	150
15-31-161, 162	42.15.507, 513 - 516	1004
15-31-501	Rules I - VI (Revenue)	150
15-31-501	42.15.507	150
15-31-501	42.15.507, 513 - 516	1004
15-32-601, 602	42.15.507	150
15-32-601, 602	42.15.507	1004
15-32-604	42.15.507	150
15-32-604	42.15.507	1004
15-32-609 - 611	42.15.507	150
15-32-609 - 611	42.15.507	1004
15-44-101 - 103	42.20.160, 162	1128
15-44-101 - 105	42.20.165, 167, 168	1128
15-44-105	42.20.160 - 162	1128
15-61-203	42.15.604	1015
15-61-204	42.15.602	1015
15-70-104	Rules I - VI (Transportation)	97
15-70-104	18.11.103	964
15-70-233	Rules I - VI (Transportation)	97
15-70-233	18.11.103	964
15-70-357	Rules I - VI (Transportation)	97
15-70-357	18.11.103	964
16-1-302	42.12.111	1139
16-1-303	Rules I - V (Revenue)	1132
16-1-303	42.11.301, 305	1132
16-1-303	Rules I - IV (Revenue)	1139
16-1-303	42.11.244, 12.101, 102, 106, 108, 111, 207, 212, 13.101, 105	1139
16-1-303	42.12.132	1491
16-2-101	Rules I - V (Revenue)	1132
16-2-101	42.11.301, 305	1132
16-2-109	Rule V (Revenue)	1132
16-2-109	42.11.305	1132
16-2-407	Rule V (Revenue)	1132
16-3-103	42.11.244	1139
16-3-241	42.13.212	1139
16-3-244	42.13.212	1139
16-3-301	42.13.101	1139
16-3-302	42.13.105	1139
16-3-311	42.12.106, 13.105	1139
16-4-104	42.12.207	1139
16-4-105	42.12.102, 106, 108	1139
16-4-106	42.12.207	1139
16-4-201	42.12.101, 207	1139
16-4-203	42.12.102, 108	1139

-1962-

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
16-4-205	42.12.106	1139
16-4-207	42.12.106, 108	1139
16-4-401, 402	Rules I - IV (Revenue)	1139
16-4-402	42.12.101	1139
16-4-404	Rules I - IV (Revenue)	1139
16-4-404	42.12.106, 108, 207, 13.105	1139
16-4-404	42.12.132	1491
16-4-406	42.13.101	1139
16-4-420	42.13.105	1139
16-6-104	42.13.105	1139
16-6-305	42.13.101	1139
16-6-314	42.13.101	1139
16-11-103	42.31.131	148
16-11-112	42.31.131	148
16-11-156	42.31.131	148
16-11-306	42.31.331	733
16-11-312	42.31.331	733
16-32-603	42.15.507	150
16-32-603	42.15.507	1004
17-4-105	46.30.507	1395
17-6-406	8.99.506	1468
17-6-406, 407	8.99.511	1468
18-1-102	Opinion No. 12	1023
18-2-201	Opinion No. 12	1023
18-2-401	Opinion No. 12	1023
18-2-401 - 403	24.16.9003	1581
18-2-401 - 432	24.16.9003	718
18-2-401 - 432	24.16.9007	1581
18-2-402	24.16.9004	1581
18-2-403	Opinion No. 12	1023
18-2-406	Opinion No. 12	1023
18-2-411	24.16.9003	1581
18-2-411	Opinion No. 12	1023
18-2-421, 422	Opinion No. 12	1023
18-2-422	24.16.9004	1581
18-2-431	24.16.9003, 9004	1581
18-2-431, 432	Opinion No. 12	1023
18-4-303, 304	Rule V (Revenue)	1132
Title 19, Chs. 2, 3, 5 - 9, 13, 17	2.43.302	376
19-2-403	2.43.302, 304, 308, 309	376
19-3-304	2.43.302, 304	376
19-3-305	2.43.304	376
19-5-201	2.43.302, 304	376
19-6-201	2.43.302, 304	376
19-6-202	2.43.304	376

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
19-7-201	2.43.302, 304	376
19-8-201	2.43.302, 304	376
19-8-202	2.43.304	376
19-9-201	2.43.302, 304	376
19-9-504	2.43.304	376
19-13-202	2.43.302, 304	376
19-13-504	2.43.304	376
19-17-107	2.43.304	376
20-1-301, 302	10.20.102	1244
20-1-304	10.20.102	1244
20-2-114	Rules I - LXXIV (Board of Public Education)	1358
20-2-114	10.55.602 - 605, 901 - 907, 1001	1358
20-2-121	Rules I - LXXIV (Board of Public Education)	1358
20-2-121	10.55.602 - 605, 901 - 907, 1001	1358
20-2-121	10.57.204	826
20-2-121	10.57.406	828
20-2-121	10.57.220	830
20-2-121	10.57.301	832
20-2-121	10.57.401	834
20-2-121	10.57.215	836
20-2-121	10.57.301	838
20-2-121	10.57.403	840
20-3-106	Rules I - LXXIV (Board of Public Education)	1358
20-3-106	10.30.402, 404, 415	1244
20-3-106	10.55.602 - 605, 901 - 907, 1001	1358
20-4-102	10.57.204	826
20-4-102	10.57.215	836
20-4-102	10.57.220	830
20-4-102	10.57.301	832
20-4-102	10.57.301	838
20-4-102	10.57.401	834
20-4-102	10.57.403	840
20-4-102	10.57.404	409
20-4-102	10.57.406	828
20-4-106	10.57.404	409
20-4-108	10.57.404	409
20-5-320, 321	10.16.1314	1244
20-5-323	10.10.301C, 16.1314	1244
20-6-701	10.30.402	1244
20-6-702	10.30.404	1244
20-6-704	10.30.415	1244
20-7-101	Rules I - LXXIV (Board of Public Education)	1358
20-7-101	10.55.602 - 605, 901 - 907, 1001	1358
20-7-117	10.20.102	1244

-1964-

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
20-7-431	10.16.2215, 2216	1244
Title 20, Ch. 9	10.15.101	1244
20-9-102	Rules I, II (OPI)	1244
20-9-102	10.10.303, 308, 311, 313,	
	15.101,	
	20.102,	
	22.102,	
	23.103	1244
20-9-103	Rule I (OPI)	1244
20-9-103	10.10.303, 504	1244
20-9-201	Rule I (OPI)	1244
20-9-201	10.10.503, 504	1244
20-9-212, 213	10.10.308	1244
20-9-308	Rule II (OPI)	1244
20-9-308	10.22.102	1244
20-9-311	Rule II (OPI)	1244
20-9-311	10.20.102	1244
20-9-313	10.20.102	1244
20-9-315	10.22.102	1244
20-9-321	10.16.2218	1244
20-9-344	10.10.503, 504	1244
20-9-353	10.23.103	1244
20-9-502	Rule I (OPI)	1244
20-9-503	10.10.313	1244
20-9-805	10.20.102	1244
20-10-101	10.7.101	1244
20-10-103	10.7.111	1244
20-10-112	10.7.101, 106, 108, 111, 112	1244
20-10-124	10.7.108	1244
20-10-126	10.7.112	1244
20-10-132	10.7.112	1244
20-10-141	10.7.112	1244
20-10-142	10.7.106	1244
20-10-143	10.7.108	1244
20-10-147	10.7.101	1244
20-10-147	10.10.311	1244
22-1-301 - 317	Opinion No. 11	1018
22-1-328	10.102.4001	1262
22-1-328	10.102.4001	1563
22-1-330	10.102.4001	1262
22-1-330	10.102.4001	1563
22-3-107	Rules VII - X, XII - XVI (Historical Society)	411
22-3-421	Rules II, X, XIII, XV (Historical Society)	411
22-3-422	Rules XIII, XV (Historical Society)	411
22-3-423	Rules I - VIII, X, XI, XIII, XV (Historical Society)	411
22-3-424	Rules I - XI, XIII, XV (Historical Society)	411

13-7/16/98

Montana Administrative Register

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
22-3-425 - 427	Rules XIII, XV (Historical Society)	411
22-3-428	Rules XIII, XV, XVI (Historical Society)	411
22-3-429	Rules XIII - XV (Historical Society)	411
22-3-430	Rules IX, X, XIII - XV (Historical Society)	411
22-3-431	Rules XIII, XV (Historical Society)	411
22-3-432	Rules XII, XIII, XV (Historical Society)	411
22-3-433	Rules XIII, XV (Historical Society)	411
22-3-434	Rules XIII (Historical Society)	411
22-3-435	Rules VII, VIII, XIII, XV (Historical Society)	411
22-3-436 - 441	Rules XIII (Historical Society)	411
23-3-404	8.8.2802, 2803, 2903, 2906, 3301	1053
23-3-405	Rule I (Commerce - Athletics)	1053
23-3-405	8.8.2802, 2803, 2903, 2904, 2906, 3103, 3301	1053
23-3-406	8.8.3103	1053
23-3-501	8.8.3301	1053
23-3-601	8.8.3301	1053
23-4-104	8.22.502, 503, 706, 710, 801, 802, 1802	615
23-4-104	8.22.502	1156
23-4-201	8.22.502, 503, 611	615
23-4-201, 202	8.22.502	1156
23-4-202	8.22.502, 611, 706, 710, 801, 802, 1619	615
23-4-301	8.22.801, 1619	615
23-4-302, 303	8.22.1619	615
25-1-201	Opinion No. 14	1286
27-5-213	Rule XIV (Commerce - Consumer Affairs)	68
27-5-214	Rule XIII (Commerce - Consumer Affairs)	68
30-12-201	Rule II (Commerce - Weights and Measures)	517
30-12-202	Rules I, II (Commerce - Weights and Measures)	517
30-12-202	8.77.101 - 104, 201	517
30-12-203	8.77.102	517
32-1-203	8.87.401, 601	1560
32-1-371	8.87.601	1560
33-1-313	Rules VI, XI, XIII (State Auditor)	1
33-1-313	Rules I - XV (State Auditor)	382
33-1-313	6.6.302 - 310	395
33-1-313	6.6.4001	47

-1966-

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
33-1-313	6.6.5001, 5004, 5008, 5020, 5024, 5028, 5032, 5036, 5044, 5050, 5054, 5058, 5060, 5062, 5066, 5070, 5074, 5078, 5090	1
33-1-313	6.6.5001, 5008, 5036, 5050, 5058, 5060, 5079E, 5079J, 5079L	1698
33-1-313	6.6.5101	814
33-1-501	6.6.5044, 5060	1
33-1-501	6.6.5060	1698
33-2-533	6.6.4001	47
33-2-1517	6.6.4001	47
33-16-1012	6.6.8301	599
33-18-203	6.6.2507	1
33-18-203	6.6.2507	1698
33-18-204	6.6.302 - 310	395
33-18-206	Rule XIII (State Auditor)	1
33-18-206	6.6.5079L	1698
33-20-308	Rules I - XV (State Auditor)	382
33-22-130	Rule XIII (State Auditor)	1
33-22-130	6.6.5079L	1698
33-22-140	Rules I, V, XI (State Auditor)	1
33-22-140	6.6.5079, 5079J	1698
33-22-141	Rules V - VII (State Auditor)	1
33-22-141	6.6.5079E	1698
33-22-142	Rules V, VIII, XIV (State Auditor)	1
33-22-143	Rules I, V - XIV (State Auditor)	1
33-22-143	6.6.5050, 5058	1
33-22-143	6.6.5050, 5058, 5079, 5079E, 5079H - 5079J, 5079L	1698
33-22-184	6.6.5050	1698
33-22-246	Rules XII, XIII (State Auditor)	1
33-22-246	6.6.5079L	1698
33-22-301	Rule XIII (State Auditor)	1
33-22-301	6.6.5079L	1698
33-22-501	6.6.5060	1
33-22-501	6.6.5060	1698
33-22-514	Rules VI, IX (State Auditor)	1
33-22-514	6.6.5079E, 5079H	1698
33-22-523	Rules I, V, X, XI (State Auditor)	1
33-22-523	6.6.5079, 5079I, 5079J	1698
33-22-524	Rule V (State Auditor)	1
33-22-526	Rules I, V, VI, XI (State Auditor)	1
33-22-526	6.6.5058	1
33-22-526	6.6.5058, 5079, 5079E, 5079J	1698
33-22-1802	Rules III, V (State Auditor)	1
33-22-1802	6.6.5001, 5004, 5008, 5020, 5024, 5028, 5032, 5036, 5044, 5050, 5054, 5058, 5060, 5062, 5066, 5070, 5074, 5078, 5090	1
33-22-1802	6.6.5001, 5008, 5036, 5050, 5058, 5060, 5079B	1698

13-7/16/98

Montana Administrative Register

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
33-22-1803	6.6.5001, 5058, 5060	1
33-22-1803	6.6.5001, 5058, 5060	1698
33-22-1804	6.6.5004	1
33-22-1808	6.6.5004	1
33-22-1809	Rule III (State Auditor)	1
33-22-1809	6.6.5036, 5062, 5070, 5078, 5090	1
33-22-1809	6.6.5036	1698
33-22-1810	6.6.5050	1698
33-22-1810	6.6.5050, 5054, 5066	1
33-22-1811	Rules I - IV, VI (State Auditor)	1
33-22-1811	6.6.2507, 5004, 5036, 5044, 5050, 5058, 5066, 5070, 5074	1
33-22-1811	6.6.2507, 5036, 5058, 5079, 5079A, 5079C, 5079E	1698
33-22-1812	6.6.5004, 5020, 5024, 5028, 5032, 5036, 5044, 5050, 5054, 5058, 5062, 5066, 5070, 5074, 5078, 5090	1
33-22-1812	6.6.5008, 5036, 5050, 5058	1698
33-22-1813	6.6.5001	1698
33-22-1813	6.6.5001, 5078	1
33-22-1814	6.6.5050	1698
33-22-1814	6.6.5050, 5062	1
33-22-1819	6.6.5101	814
33-22-1822	Rules I - VII (State Auditor)	1
33-22-1822	6.6.5001, 5004, 5008, 5020, 5024, 5028, 5032, 5036, 5044, 5050, 5054, 5058, 5060, 5062, 5066, 5070, 5074, 5078, 5090	1
33-22-1822	6.6.5001, 5008, 5036, 5050, 5058, 5060, 5079 - 5079C, 5079E	1698
33-22-1822	6.6.5101	814
33-22-1827	6.6.5032	1
33-22-1828	6.6.5008	1698
33-22-1828	6.6.5008, 5020, 5024	1
33-31-101, 102	6.6.2503	1
33-31-103	6.6.2503, 2504, 2506, 2507	1
33-31-103	6.6.2507	1698
33-31-111	6.6.2507	1
33-31-111	6.6.2507	1698
33-31-201	6.6.2504	1
33-31-301	6.6.2506, 2507	1
33-31-301	6.6.2507	1698
33-31-307	6.6.2506	1
33-31-312	6.6.2506, 2507	1
33-31-312	6.6.2507	1698
33-31-405	6.6.2503	1
37-1-101	8.39.508	816
37-1-131	Rules I, II (Commerce - Clinical Laboratory Science Practitioners)	54

-1968-

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
37-1-131	Rules I - V (Commerce - Psychologists)	57
37-1-131	8.12.601, 603, 607	49
37-1-131	8.14.803, 805, 815 - 818	1456
37-1-131	8.22.502	615
37-1-131	8.22.502	1156
37-1-131	8.32.306	1308
37-1-131	8.35.408	1551
37-1-131	8.39.505, 508, 514, 515, 518	816
37-1-131	8.52.604, 617, 618	57
37-1-131	8.56.602	1241
37-1-131	8.57.407 - 409, 411, 417	238
37-1-131	8.57.417	744
37-1-131	8.58.413	407
37-1-131	8.58.419, 714	821
37-1-131	8.62.404	1465
37-1-134	8.12.606	49
37-1-134	8.14.814	1226
37-1-134	8.16.405	922
37-1-134	8.22.503	615
37-1-134	8.24.409	1058
37-1-134	8.30.407	1228
37-1-134	8.32.306	1308
37-1-134	8.36.409	235
37-1-134	8.39.518	816
37-1-134	8.59.506	1553
37-1-134	8.77.102	517
37-1-136	8.58.419	821
37-1-136	8.59.702	1553
37-1-141	8.12.606	49
37-1-304	8.4.510	515
37-1-304	8.14.803, 805	1456
37-1-304	8.16.405	922
37-1-304	8.36.417	235
37-1-306	8.12.606	49
37-1-306	8.35.417	1551
37-1-306	8.14.815	1456
37-1-306	8.36.601, 602	235
37-1-306	8.36.602	925
37-1-306	8.52.702	57
37-1-306	8.56.414	1241
37-1-306	8.57.411	238
37-1-306	8.62.703	1465
37-1-307	8.35.408	1551
37-1-307	8.56.801	1241
37-1-308	8.12.607	49
37-1-308, 309	8.35.408	1551
37-1-309	8.12.607	49
37-1-311, 312	8.12.607	49
37-1-311, 312	8.35.408	1551

13-7/16/98

Montana Administrative Register

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
37-1-316	Rule I (Commerce - Chemical Dependency Counselors)	1305
37-1-316	Rules I - V (Commerce - Psychologists)	57
37-1-316	8.35.408	1551
37-1-316	8.59.702	1553
37-1-319	Rule I (Commerce - Chemical Dependency Counselors)	1305
37-1-319	Rules I - V (Commerce - Psychologists)	57
37-1-319	8.12.604, 606, 607	49
37-1-319	8.14.803, 815	1456
37-1-319	8.35.408, 417	1551
37-1-319	8.36.601, 602	235
37-1-319	8.36.602	925
37-1-319	8.39.512, 709	816
37-1-319	8.52.617, 702	57
37-1-319	8.56.801	1241
37-1-319	8.62.703	1465
37-1-402	Rule XVII (Commerce - Chemical Dependency Counselors)	602
37-1-403, 404	Rule XVIII (Commerce - Chemical Dependency Counselors)	602
37-4-205	8.16.405	922
37-4-301	8.16.405	922
37-4-303	8.16.405	922
37-4-307	8.16.405	922
37-8-102	Declaratory Ruling (Commerce - Nursing)	770
37-8-102	Declaratory Ruling (Commerce - Nursing)	773
37-8-202	Declaratory Ruling (Commerce - Nursing)	770
37-8-202	8.32.306	1308
37-8-415	8.32.1408	623
37-8-431	8.32.306	1308
37-10-202	8.36.409, 417, 601, 602	235
37-10-202	8.36.602	925
37-10-302	8.36.409	235
37-10-307	8.36.409	235
37-12-201	Rule I (Commerce - Chiropractors)	49
37-12-201	8.12.601, 603, 604, 606	49
37-12-302	8.12.601	49
37-12-304	8.12.601, 603	49
37-12-305	Rule I (Commerce - Chiropractors)	49
37-12-305	8.12.601, 604	49
37-12-307	8.12.606, 607	49
37-14-202	8.56.402, 414, 602, 801	1241
37-14-302 - 306	8.56.402	1241
37-14-306	8.56.402, 602	1241
37-15-102	8.62.502	1465

-1970-

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
37-15-202	8.62.404, 502, 703	1465
37-15-304	8.62.404	1465
37-15-313	8.62.502	1465
37-17-202	Rules I - V (Commerce - Psychologists)	57
37-17-202	8.52.604, 617, 618, 702	57
37-17-302	8.52.604	57
37-19-202	Rules XII, XIII (Commerce - Board of Funeral Service)	1228
37-19-202	8.30.401, 402, 404, 406, 407	1228
37-19-202	8.30.601 - 605, 607, 801, 805	1228
37-19-301	8.30.407	1228
37-19-302	8.30.401, 406	1228
37-19-303	8.30.401, 402, 406	1228
37-19-304	8.30.407	1228
37-19-306	8.30.407	1228
37-19-315	Rule XIII (Commerce - Board of Funeral Service)	1228
37-19-315	8.30.605	1228
37-19-402	8.30.407	1228
37-19-403	Rule XII (Commerce - Board of Funeral Service)	1228
37-19-403	8.30.407, 601 - 605, 607	1228
37-19-702	8.30.407	1228
37-19-703	8.30.407, 801, 805	1228
37-19-704	8.30.805	1228
37-19-705	8.30.801, 805	1228
37-19-706	8.30.805	1228
37-19-807	Rules I - XI (Commerce - Board of Funeral Service)	1228
37-19-807, 808	8.30.407	1228
37-19-814	Rules I, II (Commerce - Board of Funeral Service)	1228
37-19-814	8.30.407	1228
37-19-815	Rule X (Commerce - Board of Funeral Service)	1228
37-19-822	Rules II - V, XI (Commerce - Board of Funeral Service)	1228
37-19-823	Rules IV - VI (Commerce - Board of Funeral Service)	1228
37-24-201	8.35.408	1551
37-24-202	8.35.408, 417	1551
37-27-105	8.4.510	515
37-28-104	8.59.506, 601, 702	1553
37-28-202	8.59.506	1553
37-28-203	8.59.506, 601	1553
37-31-203	8.14.803, 805, 807, 815 - 818	1456
37-31-203	8.14.814	1226
37-31-301	8.14.816	1456
37-31-302	8.14.816, 817	1456
37-31-302 - 305	8.14.814	1226

-1971-

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
37-31-303	8.14.805	1456
37-31-304	8.14.803, 805	1456
37-31-308	8.14.803, 805	1456
37-31-309	8.14.814	1226
37-31-311	8.14.803, 807	1456
37-31-311, 312	8.14.814	1226
37-31-312	8.14.816	1456
37-31-321 - 323	8.14.814	1226
37-31-322	8.14.815	1456
37-32-201	8.14.814	1226
37-32-301, 302	8.14.814	1226
37-32-304 - 306	8.14.814	1226
37-34-201	Rules I, II (Commerce - Clinical Laboratory Science Practitioners)	54
37-34-201	8.13.303, 304	54
37-34-301, 302	Declaratory Ruling (Commerce - Nursing)	773
37-35-102	Rule III (Commerce - Chemical Dependency Counselors)	602
37-35-103	Rule I (Commerce - Chemical Dependency Counselors)	1305
37-35-103	Rules I - XVIII (Commerce - Chemical Dependency Counselors)	602
37-35-103	8.11.113	1408
37-35-201	Rule IV (Commerce - Chemical Dependency Counselors)	602
37-35-202	Rules V - XIII (Commerce - Chemical Dependency Counselors)	602
37-35-202	8.11.113	1408
37-35-203	Rules IX, XIV - XVII (Commerce - Chemical Dependency Counselors)	602
37-35-301	Rule XVIII (Commerce - Chemical Dependency Counselors)	602
37-40-101	Notice of Negotiated Rulemaking (Commerce - Professional Engineers and Land Surveyors)	703
37-40-203	8.60.408, 414	824
37-40-302	8.60.408	824
37-47-101	8.39.515	816
37-47-201	8.39.505, 508, 514, 515, 518, 704, 709	816
37-47-201	8.39.804	1463
37-47-301	8.39.514	816
37-47-302	8.39.508	816
37-47-303	8.39.508, 515, 518	816
37-47-304	8.39.505, 508, 518	816
37-47-306	8.39.508, 518	816
37-47-307	8.39.505, 508, 514, 515, 518	816
37-47-308	8.39.518	816
37-47-312	8.39.508, 709	816
37-47-341	8.39.709	816
37-51-102	8.58.419	821

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
37-51-201	8.58.419	821
37-51-202, 203	8.58.419, 714	821
37-51-203, 204	8.58.413	407
37-51-302	8.58.413	407
37-51-311	8.58.413	407
37-51-321	8.58.419	821
37-51-512	8.58.419	821
37-51-606	8.58.714	821
37-54-105	8.57.407 - 409, 411, 417	238
37-54-105	8.57.417	744
37-54-202, 203	8.57.407	238
37-54-210	8.57.411	238
37-54-303	8.57.408, 409, 411	238
37-54-310	8.57.411	238
37-66-202	8.24.409	1058
37-66-301	8.24.409	1058
37-66-305	8.24.409	1058
36-66-307, 308	8.24.409	1058
37-67-101	Notice of Negotiated Rulemaking (Commerce - Professional Engineers and Land Surveyors)	700
37-67-101	Notice of Negotiated Rulemaking (Commerce - Professional Engineers and Land Surveyors)	703
37-67-202	Notice of Negotiated Rulemaking (Commerce - Professional Engineers and Land Surveyors)	700
37-67-202	Notice of Negotiated Rulemaking (Commerce - Professional Engineers and Land Surveyors)	703
37-69-102	8.44.402	1158
37-69-202	8.44.402	1158
37-69-401	8.44.402	1158
39-3-201	24.35.301, 303	1086
39-3-202	24.35.202, 205, 213, 301, 303	1086
39-3-208 - 210	24.35.202	1086
39-3-212	24.35.205	1086
39-3-216	24.35.213	1086
39-3-403	24.35.202, 205, 213, 301, 303	1086
39-6-101	24.21.414	723
39-6-101	24.21.414	1586
39-6-106	24.21.414	723
39-6-106	24.21.414	1586
39-9-103	24.33.121, 131	1078
39-9-103	24.35.121	1082
39-9-202	24.33.131	1078
39-9-206	24.33.121	1078
39-9-206	24.35.121	1082
39-30-101	2.21.1422	157
39-30-106	2.21.1422	157

-1973-

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
39-51-201	24.35.202, 301, 303	1086
39-51-203	24.35.202	1086
39-51-204	24.35.301, 303	1086
39-51-301, 302	24.35.202, 205, 213, 301, 303	1086
39-51-1109	24.35.205, 213	1086
39-71-120	24.35.111, 121, 141	1082
39-71-120	24.35.202, 205, 301, 303	1086
39-71-203	Rules I - III (Labor and Industry)	433
39-71-203	Rules I - XI (Labor and Industry)	1064
39-71-203	24.29.207, 703, 707, 708, 801 - 803, 805, 807, 808, 1201, 1203, 1204, 2329, 2803, 2821, 2824, 2827, 2829, 2834, 2837, 3701, 3703, 3704, 3707, 3711, 3721, 3726, 3731, 3741	1064
39-71-203	24.29.1425	433
39-71-203	24.35.111, 121, 141	1082
39-71-203	24.35.202, 205, 213, 301, 303	1086
39-71-204	24.29.207	1064
39-71-304	Rule I (Labor and Industry)	1064
39-71-307	24.29.801	1064
39-71-401	24.29.708	1064
39-71-401	24.35.111, 121, 141	1082
39-71-401	24.35.301, 303	1086
39-71-401, 402	Rule I (Labor and Industry)	1064
39-71-408	24.29.707	1064
39-71-409	24.35.111	1082
39-71-415	24.29.207	1064
39-71-415	24.35.202, 205, 213	1086
39-71-433	24.29.3701, 3703, 3704, 3707, 3711, 3721, 3726, 3731, 3741	1064
39-71-503	24.29.2803	1064
39-71-504	24.29.707, 2803	1064
39-71-504	24.35.213	1086
39-71-506	24.29.2839	1064
39-71-507	24.29.707	1064
39-71-532	24.29.2821, 2824, 2827, 2829, 2834, 2837	1064
39-71-532	24.35.213	1086
39-71-603	24.29.801	1064
39-71-605	24.29.808	1064
39-71-704	Rules I - III (Labor and Industry)	433
39-71-704	24.29.1425	433
39-71-740	24.29.803	1064
39-71-741	24.29.805, 1201, 1203, 1204	1064
Title 39, Ch. 71, Pt. 10	Rules II - XI (Labor and Industry)	1064
39-71-1001	24.29.808	1064
39-71-1103	24.29.2329	1064
39-71-1105	24.29.2329	1064
39-71-2201	Rule I (Labor and Industry)	1064

-1974-

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
39-71-2201	24.29.703	1064
39-71-2301	24.29.703	1064
39-71-2315	Rules I, II (Administration - State Fund)	695
39-71-2315	2.55.501, 502	1273
39-71-2323	Rules I, II (Administration - State Fund)	695
39-71-2323	2.55.501, 502	1273
39-71-2336	Rule I (Labor and Industry)	1064
39-71-2401	24.35.213	1086
39-71-2407	24.28.101, 112	1061
39-71-2408	24.28.101	1061
39-71-2411	24.28.112	1061
39-71-2901	Rule I (Labor and Industry - Workers' Compensation Judge)	711
39-71-2901	Rule I (Labor and Industry - Workers' Compensation Judge)	1579
39-71-2901	24.5.101, 301, 303, 323, 326, 330, 348, 350	711
39-71-2905	24.29.207	1064
39-72-611, 612	24.29.207	1064
Title 40, Ch. 4	Opinion No. 14	1286
40-4-204	46.36.1532	317
40-4-204	Opinion No. 14	1286
40-4-208	Opinion No. 14	1286
40-4-219	Opinion No. 14	1286
40-4-233, 234	Opinion No. 14	1286
40-5-202	46.30.507	1395
40-5-202	46.30.1501, 1502, 1507, 1508, 1513 - 1516, 1520 - 1522, 1525, 1533 - 1535, 1538, 1541 - 1543, 1549	317
40-5-202	46.30.1601, 1603, 1605	310
40-5-202	46.30.1605	1777
40-5-203	Rules I - XXIII (DPHHS)	317
40-5-209	Rules I - XXIII (DPHHS)	317
40-5-209	46.30.1501, 1502, 1507, 1508, 1513 - 1516, 1520 - 1522, 1525, 1532 - 1535, 1538, 1541 - 1543, 1549	317
40-5-210	46.30.1601, 1603, 1605	310
40-5-210	46.30.1605	1777
41-3-1103	11.12.516, 532, 538, 543	489
41-3-1142	11.12.516, 532, 538, 543	489
41-5-802	20.9.569	289
41-5-809	20.9.569	289
41-5-1802	20.9.501, 503, 506, 510, 513, 515, 518, 520, 524, 526, 528, 533, 535, 538, 541, 545, 547, 550, 555, 558, 561, 566, 572, 575, 578	289
44-10-202	23.17.108	709

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
44-10-202	23.17.108	1279
44-10-301	23.17.108	709
44-10-301	23.17.108	1279
46-23-502	Opinion No. 15	1526
46-23-504	Opinion No. 15	1526
46-23-508, 509	Opinion No. 15	1526
46-23-511	Opinion No. 15	1526
50-1-202	Rules I - XVIII (DPHHS)	108
50-1-202	16.10.1605, 1607, 1613, 1614, 1620, 1622, 1624, 1626, 1628, 1630, 1636, 1640	967
50-1-202	16.28.101, 601, 605, 609	1690
50-1-202	16.38.307	105
50-2-106	Opinion No. 11	1018
50-2-111	Opinion No. 11	1018
50-2-116	16.28.101	1690
50-2-116	Opinion No. 11	1018
50-2-118	16.28.601, 605, 609	1690
50-5-103	16.32.602, 609, 615, 616, 623, 640, 644, 645, 650, 651	539
50-5-204	16.32.602, 609, 615, 616, 623, 640, 644, 645, 650, 651	539
50-16-1004	16.28.601	1690
50-17-103	16.28.101	1690
50-18-101	16.28.101	1690
50-18-102	16.28.605, 609	1690
50-18-105	16.28.605, 609	1690
50-18-107	16.28.605, 609	1690
50-60-101	Rule V (Commerce - Building Codes)	1310
50-60-103	8.70.101, 105, 108	1310
50-60-104	8.70.101, 105, 407	1310
50-60-106	8.70.208	1310
50-60-108, 109	8.70.101	1310
50-60-201	8.70.101, 104, 105, 108, 302, 1503, 1504	1310
50-60-202	8.70.202	1310
50-60-203	Rules I - VI (Commerce - Building Codes)	1310
50-60-203	8.70.101 - 105, 108, 110, 202, 208, 302, 303, 407, 409, 566, 568, 569, 601, 604, 612, 1503, 1504	1310
50-60-301	8.70.110, 202	1310
50-60-302	Rules I - VI (Commerce - Building Codes)	1310
50-60-302	8.70.202, 208	1310
50-60-401	8.70.108, 566, 568, 569	1310
50-60-402	8.70.108	1310
50-60-504	8.70.202, 302, 303	1310
50-60-508	8.70.105, 302	1310

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
50-60-603	8.70.202, 407, 409	1310
50-60-604	8.70.407, 409	1310
50-60-607	8.70.407	1310
50-60-701, 702	8.70.601, 604, 612	1310
50-60-803	8.70.104	1310
50-71-301	24.30.1302	443
50-71-301	24.30.1302	966
50-71-311, 312	24.30.102	439
50-73-103	24.30.1302	443
50-73-103	24.30.1302	966
52-2-111	11.12.516, 532, 538, 543	489
52-2-113	11.12.516, 532, 538, 543	489
52-2-735	16.24.414	762
53-1-203	Rules I - X (Corrections)	428
53-2-105	Rule V (DPHHS)	1592
53-2-108	Rule III (DPHHS)	1592
53-2-201	Rules I - VIII (DPHHS)	886
53-2-201	Rules I - XV (DPHHS)	1592
53-2-201	46.10.101, 411, 701, 702, 704, 705, 707, 708, 710, 711, 801, 803, 805, 807 - 809, 811, 813, 815, 817, 819, 821, 823, 825, 827, 829, 831, 833, 835, 837, 839, 841, 843, 847	1592
53-2-201	46.12.303, 502A, 525A, 526A, 527A, 528, 538, 573, 1449, 2013	129
53-2-201	46.12.303, 502A, 505, 508, 540 - 542, 703, 802, 806, 1005, 1015, 1025	1470
53-2-201	46.12.303, 527A	676
53-2-201	46.12.802, 806	497
53-2-201	46.12.1221, 1222, 1228, 1229, 1231, 1232, 1235, 1237, 1241, 1245, 1246, 1251, 1254, 1258, 1260, 1265	1097
53-2-201	46.12.1231, 1258	1749
53-2-201	46.12.1710, 4810, 5007	886
53-2-201	46.12.3804, 3805	1660
53-2-201	46.14.301, 401	639
53-2-201	46.18.113	1592
53-2-201	46.18.201, 205, 206, 209, 210, 215 - 217, 220 - 223, 226, 227, 230, 231, 237 - 240, 243, 302, 305, 309, 310, 314, 315, 318, 319, 322, 323, 326, 329 - 332	1676
53-2-205, 206	46.10.101	1592
53-2-211	Rule V (DPHHS)	1592
53-2-612, 613	46.12.3206	1660
53-2-613	46.18.113	1592
53-4-113	46.12.3401	1660

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
53-4-201	46.10.302, 304, 1812	1592
53-4-201	46.18.112	1592
53-4-211	Rules I - XV (DPHHS)	1592
53-4-211	46.10.101 - 110, 201 - 208, 210, 301, 302, 305, 306, 314, 321, 401 - 403, 405, 406, 411, 505, 701, 702, 704, 705, 707, 708, 710, 711, 801, 803, 805, 807, 809, 811, 813, 815, 817, 819, 821, 823, 825, 827, 829, 831, 833, 835, 837, 839, 841, 843, 847	1592
53-4-211	46.12.3402	1660
53-4-211	46.18.101 - 103, 106 - 108, 112 - 114, 118 - 122, 124 - 126, 130, 133, 134, 201, 205, 206, 209, 210, 215 - 217, 220 - 223, 226, 227, 230, 231, 237 - 240, 243, 302, 305, 309, 310, 314, 315, 318, 319, 322, 323, 326, 329 - 332	1676
53-4-212	Rules I - XV (DPHHS)	1592
53-4-212	46.10.101 - 110, 201 - 208, 210, 301, 302, 304A, 305, 306, 314 - 321, 324, 401 - 403, 405, 406, 411, 505, 506, 508, 510 - 514, 701, 702, 704, 705, 707, 708, 710, 711, 801, 803, 805, 807 - 811, 813, 815, 817, 819, 821, 823, 825, 827, 829, 831, 833, 835, 837, 839, 841, 843, 847, 18.101 - 103, 106 - 108, 112 - 114, 118 - 122, 124 - 126, 130, 133, 134	1592
53-3-212	46.12.3401, 3402, 3404	1660
53-4-212	46.18.201, 202, 205, 206, 209, 210, 215 - 217, 220 - 223, 226, 227, 230, 231, 237 - 240, 243, 302, 305, 306, 309, 310, 314, 315, 318, 319, 322, 323, 326, 329 - 332	1676
53-4-215	46.10.101, 701, 702, 704, 705, 707, 708, 710, 711, 801, 803, 805, 807, 809, 811, 813, 815, 817, 819, 821, 823, 825, 827, 829, 831, 833, 835, 837, 839, 841, 843, 847	1592
53-4-231	Rules I, II (DPHHS)	1592
53-4-231	46.10.108, 109, 302, 304, 314, 321, 324, 505, 506, 508, 510 - 514	1592
53-4-231	46.12.3401 - 3403, 3804	1660
53-4-233	Rules VII, VIII (DPHHS)	1592

-1978-

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
53-4-241	46.10.324, 402, 403, 411, 505, 506, 508, 510 - 514, 708	1592
53-4-242	46.10.324, 505, 506, 508, 510 - 514	1592
53-4-506	16.24.414	762
53-4-601	46.18.101 - 103, 106 - 108, 112 - 114, 118 - 121, 124 - 126, 130, 133, 134	1592
53-4-601	46.18.201, 205, 206, 209, 210, 215 - 217, 220 - 223, 226, 227, 230, 231, 237 - 240, 243, 302, 305, 309, 310, 314, 315, 318, 319, 322, 323, 326, 329	1676
53-4-603	46.18.107, 130	1592
53-4-606	46.18.118, 133	1592
53-4-607	46.18.108	1592
53-4-608	46.18.133, 134	1592
53-4-613	46.18.201, 205, 206, 209, 210, 215 - 217, 220 - 223, 226, 227, 230, 231, 237 - 240, 243, 302, 305, 306, 309, 310, 314, 315, 318, 319, 322, 323, 326, 329 - 332	1676
53-4-701	46.10.801, 810	1592
53-4-702	46.10.803	1592
53-4-703	46.10.110, 701, 702, 704, 705, 707, 708, 710, 801, 803, 805, 807 - 809, 811, 813, 815, 817, 819, 821, 823, 825, 827, 829, 831, 833, 835, 837, 841, 843, 847	1592
53-4-704	46.10.803	1592
53-4-705	46.10.701, 702, 801, 803, 807 - 809, 811, 813, 817, 819, 821, 823, 831, 847	1592
53-4-706	46.10.704, 705, 707, 803, 805, 811, 815, 823, 837, 839	1592
53-4-707	46.10.704, 705, 707, 803, 805, 811, 837, 839	1592
53-4-708	46.10.704, 705, 707, 803, 805, 809, 813, 819, 823, 831	1592
53-4-715	46.10.704, 705, 707, 803, 805, 807, 809, 813, 815, 817, 819, 821, 825, 829, 831, 833, 835	1592
53-4-716	46.10.710, 803, 810, 825, 827	1592
53-4-717	46.10.704, 803, 805, 837, 839	1592
53-4-718	46.10.803, 829	1592
53-4-719	46.10.110, 701, 702, 704, 705, 707, 708, 710, 801, 803, 805, 807 - 811, 813, 815, 817, 819, 821, 823, 825, 827, 829, 831, 833, 835, 837, 839, 841, 843, 847	1592

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
53-4-720	46.10.701, 702, 704, 705, 707, 708, 710, 805, 807, 809, 811, 813, 815, 817, 819, 821, 823, 825, 827, 829, 831, 833, 835, 837, 841, 843, 847	1592
53-5-205	46.12.1449	129
53-6-101	Rules I - VIII (DPHHS)	886
53-6-101	46.12.303, 502A, 522, 525A, 526A, 527A, 528, 538, 573, 577, 585, 905, 912, 915, 1449, 2003, 2013	129
53-6-101	46.12.303, 527A, 912	676
53-6-101	46.12.502, 505, 508, 540 - 542, 703, 802, 806, 1005, 1015, 1025	1470
53-6-101	46.12.702	495
53-6-101	46.12.802, 806	497
53-6-101	46.12.1221, 1222, 1228, 1229, 1231, 1232, 1235, 1237, 1241, 1245, 1246, 1251, 1254, 1258, 1260, 1265	1097
53-6-101	46.12.1231, 1258	1749
53-6-101	46.12.1601, 1603, 1605, 1607, 1701, 1703, 1705, 1707, 4810, 5007	886
53-6-101	46.12.3401, 3803 - 3805	1660
53-6-108	46.12.1232	1097
53-6-111	Rules I - IV, VI - VIII (DPHHS)	886
53-6-111	46.12.303, 502A, 522, 527A, 528, 538, 1449	129
53-6-111	46.12.303, 527A	676
53-6-111	46.12.502, 505, 508	1470
53-6-111	46.12.806	497
53-6-111	46.12.1231	1749
53-6-111	46.12.1221, 1222, 1231, 1232, 1235, 1241, 1245, 1251, 1254, 1260, 1265	1097
53-6-111	46.12.5007	886
53-6-113	Rules I - VIII (DPHHS)	886
53-6-113	46.10.314, 321, 710	1592
53-6-113	46.12.303, 502A, 522, 525A, 526A, 527A, 528, 538, 573, 577, 585, 905, 912, 915, 1449, 2003, 2013	129
53-6-113	46.12.303, 505, 508, 540 - 542, 703, 802, 806, 1005, 1015, 1025	1470
53-6-113	46.12.303, 527A, 912	676
53-6-113	46.12.502	1470
53-6-113	46.12.702	495
53-6-113	46.12.802, 806	497
53-6-113	46.12.1221, 1222, 1228, 1229, 1231, 1232, 1235, 1237, 1241, 1245, 1246, 1251, 1254, 1258, 1260, 1265	1097
53-6-113	46.12.1231, 1258	1749

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
53-6-113	46.12.1601, 1603, 1605, 1607, 1701, 1703, 1705, 1707, 4810, 5007	886
53-6-113	46.12.3001 - 3003, 3201, 3206, 3402 - 3404, 3801, 3803 - 3805, 3808	1660
53-6-116	46.12.4810, 5007	886
53-6-131	46.10.321, 710	1592
53-6-131	46.12.303	676
53-6-131	46.12.303, 522, 585, 1449	129
53-6-131	46.12.3002, 3201, 3206, 3401, 3403, 3404, 3801, 3803 - 3805, 3808	1660
53-6-132, 133	46.12.3001, 3002	1660
53-6-134	46.12.3401	1660
53-6-141	46.12.303, 505, 508, 540 - 542, 703, 806, 1005, 1015, 1025	1470
53-6-141	46.12.303, 522, 573, 577, 585, 905, 912, 915, 1449, 2003	129
53-6-141	46.12.303, 912	676
53-6-141	46.12.702	495
53-6-141	46.12.802, 806	497
53-6-141	46.12.3803	1660
53-6-142	46.12.165	1097
53-6-142	46.12.3003	1660
53-6-402	46.12.1449	129
53-6-402	46.12.3804, 3805	1660
53-21-102	20.14.502	1485
53-21-106	20.14.502	1485
53-24-204	20.3.502	351
53-24-208	20.3.502	351
53-30-604	20.27.104 - 106	172
53-30-604	20.27.105	1175
53-30-606	20.27.106	172
53-30-607	20.27.104, 105	172
53-30-607	20.27.105	1175
61-4-507	Rule VI (Commerce - Consumer Affairs)	68
61-4-511	Rule IV (Commerce - Consumer Affairs)	68
61-4-512	Rule V (Commerce - Consumer Affairs)	68
61-4-515	Rules I - III, VI - IX, XIV (Commerce - Consumer Affairs)	68
61-4-516	Rule I (Commerce - Consumer Affairs)	68
61-4-517	Rules II, VII, IX, X, XII, XV (Commerce - Consumer Affairs)	68
61-4-518	Rules II, VIII, XVII (Commerce - Consumer Affairs)	68
61-4-519	Rules VIII, XIV, XVI, XVIII, XIX (Commerce - Consumer Affairs)	68
61-4-520	Rules VI, XI (Commerce - Consumer Affairs)	68
61-4-525	Rule XX (Commerce - Consumer Affairs)	68
61-4-526	Rule XVI, XVII (Commerce - Consumer Affairs)	68

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
61-4-532	Rules I - XX (Commerce - Consumer Affairs)	68
61-8-401	20.3.502	351
69-1-102	38.4.105 - 120, 125 - 128, 132 - 136, 141 - 153, 156, 162 - 164, 301	342
69-1-102	38.4.105 - 120, 125 - 128, 132 - 136, 141 - 153, 156, 162 - 164, 301	1184
69-2-101	38.4.105 - 120, 125 - 128, 132 - 136, 141 - 153, 156, 162 - 164, 301	342
69-2-101	38.4.105 - 120, 125 - 128, 132 - 136, 141 - 153, 156, 162 - 164, 301	1184
69-3-101, 102	Rule I (PSR)	1488
69-3-102, 103	38.5.1502	1488
69-3-102, 103	38.5.4101 - 4105, 4110 - 4112, 4115, 4116, 4120	983
69-3-201	38.5.4101 - 4105, 4110 - 4112, 4115, 4116, 4120	983
69-3-822	38.5.4101 - 4105, 4110 - 4112, 4115, 4116, 4120	983
69-3-834	38.5.4101 - 4105, 4110 - 4112, 4115, 4116, 4120	983
69-8-403	Rules I - V (PSR)	1121
69-8-404	Rules I - VI (PSR)	1121
69-8-408 - 410	Rule VI (PSR)	1121
69-14-111	38.4.105 - 120, 125 - 128, 132 - 136, 141 - 153, 156, 162 - 164, 301	342
69-14-111	38.4.105 - 120, 125 - 128, 132 - 136, 141 - 153, 156, 162 - 164, 301	1184
69-14-202	38.4.301	342
69-14-202	38.4.301	1184
70-9-105	42.38.205	1399
70-9-303	42.38.205	1399
70-9-802	42.38.103, 104, 204	1399
70-9-803	42.38.102, 103, 201	1399
70-9-804	42.38.102, 201	1399
70-9-805	42.38.101, 104, 201	1399
70-9-808	42.38.201	1399
70-9-815	42.38.101, 203	1399
70-9-825	42.38.203	1399
70-9-828	42.38.101 - 104, 201, 203, 204	1399
Title 75, Ch. 2	17.8.101	1725
Title 75, Ch. 2	17.8.101, 102	851
75-2-111	16.2.501	279
75-2-111	17.8.220	849
75-2-111	17.8.302, 801, 901	851
75-2-111	17.8.504, 505	1574
75-2-111	17.8.514	859
75-2-111	17.8.801, 901	1725

-1982-

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
75-2-201	16.2.501	279
75-2-202	17.8.220	849
75-2-202	17.8.801, 901	851
75-2-202 - 204	17.8.801, 901	1725
75-2-203	17.8.302, 801, 901	851
75-2-204	17.8.801, 901	851
75-2-211	17.8.101	1725
75-2-211	17.8.101, 102	851
75-2-220	17.8.504, 505	1574
75-2-220	17.8.514	859
75-5-101	Declaratory Ruling (DNRC)	194
75-5-201	Rules I - IV (DEQ - Environmental Review)	263
75-5-201	17.30.610	857
75-5-201	17.30.2001, 2003, 2005, 2006	940
75-5-301	17.30.502	847
75-5-301	17.30.610	857
75-5-301	17.30.716	274
75-5-303	17.30.716	274
75-5-312	Rule I (DEQ - Environmental Review)	631
75-5-317	17.30.716	274
75-5-401	17.30.1022	271
75-5-401	17.30.1022	1164
75-5-516	17.30.201	1565
75-5-602	17.30.1022	271
75-5-602	17.30.1022	1164
75-5-605	Declaratory Ruling (DNRC)	194
75-5-611	Rules I - IV (DEQ - Environmental Review)	263
75-5-611	17.30.2001, 2003, 2005, 2006	940
75-5-1105	36.24.104	102
75-5-1105	35.24.104	538
75-5-1113	36.24.104	102
75-5-1113	36.24.104	538
75-6-103	Rules I - VI (DEQ - Environmental Review)	257
75-6-103	17.38.101, 202, 207, 208, 215 - 218, 226, 229, 234, 235, 239, 244, 256, 270	242
75-6-103	17.38.105	257
75-6-107	17.38.244, 256	242
75-6-112	17.38.101	242
75-6-121	17.38.101	242
75-6-202	Rule II (DNRC)	861
75-6-202	36.23.106	1412
75-6-205	Rules I - XX (DNRC)	861
75-6-205	36.23.106	1412
75-6-212	Rules IV, XIV (DNRC)	861
75-6-212	36.23.106	1412
75-6-221	Rules I, V (DNRC)	861

13-7/16/98

Montana Administrative Register

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
75-6-221 - 224	36.23.106	1412
75-6-222	Rules VIII - XII, XV (DNRC)	861
75-6-223	Rules VI, XIV (DNRC)	861
75-6-224	Rules VII, XIII, XVI - XX (DNRC)	861
75-6-226	Rule XIII (DNRC)	861
75-6-226	36.23.106	1412
75-6-232	Rule I (DNRC)	861
75-6-232	36.23.106	1412
75-10-702	Rules I - VI (DEQ)	1264
75-10-704	Rules I, III, V (DEQ)	1264
75-10-1001 - 1006	8.30.601	1228
75-11-204	17.56.1227	842
75-11-212	17.56.1227	842
75-11-308	Rule I (DEQ)	479
75-11-505	Rules I, II (DEQ)	842
75-11-525	Rules I, II (DEQ)	842
75-20-216	16.2.501	279
76-3-102	Opinion No. 10	187
76-3-103	Opinion No. 10	187
76-3-206	Opinion No. 10	187
76-3-609	Opinion No. 10	187
76-4-105	17.36.801, 802, 804, 805	282
76-4-128	17.36.802, 804	282
77-1-203	Rule I (DNRC & Land Commissioners)	731
77-1-203	36.25.127	1414
77-1-209	Rule I (DNRC & Land Commissioners)	731
77-1-209	36.25.127	1414
80-4-403	4.13.1001A	698
80-4-721	4.13.1001A	698
80-7-903	4.5.302	1546
80-7-905	4.5.307 - 309	1546
80-7-906	4.5.307	1546
80-7-909	4.5.302, 307 - 309, 316	1546
80-7-922	4.5.316	1546
80-11-205, 206	4.9.401	807
81-2-101	Rule V (Board of Livestock)	1589
81-2-102	Rules I - VI (Board of Livestock)	1090
81-2-102, 103	Rules I - VIII (Board of Livestock)	1589
81-23-302	32.3.216	1092
81-23-302	32.24.301	1742
82-4-204, 205	26.4.1301	281
82-11-111	36.22.1308	636
82-11-111	36.22.1308	1745
82-11-111	36.22.1303, 1308, 1408	482
82-11-121	36.22.1408	482

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
82-11-123	36.22.1308	636
82-11-123	36.22.1308	1745
82-11-123, 124	36.22.1303, 1308, 1408	482
82-11-127	36.22.1408	482
82-11-137	36.22.1408	482
85-1-201	Rules I - IV (DNRC)	728
85-1-201	36.30.101 - 104	1414
85-1-209	Rule IV (DNRC)	728
85-1-209	36.30.101 - 104	1414
85-1-211	Rules I - IV (DNRC)	728
85-1-211	36.30.101 - 104	1414
85-2-101, 102	Declaratory Ruling (DNRC)	194
85-2-113, 114	Declaratory Ruling (DNRC)	194
85-2-308	Declaratory Ruling (DNRC)	194
85-2-311	Declaratory Ruling (DNRC)	194
85-2-402	Declaratory Ruling (DNRC)	194
85-2-436	Declaratory Ruling (DNRC)	194
85-2-505	Declaratory Ruling (DNRC)	194
87-1-201	12.3.202	629
87-1-301	Rules I - VIII (FWP)	423
87-1-301	12.3.125	166
87-1-303	12.6.901	95
87-1-303	12.6.901	1160
87-1-605	Rules I - VIII (FWP)	423
87-2-511	12.3.125	166
87-2-808	Rules I - III (FWP)	626
87-2-901	12.3.202	629
90-1-103	8.94.3714	706
90-4-201, 202	46.14.301, 401	639
90-6-104	8.111.409	92
90-6-106	8.111.409	92
90-6-502	8.111.409	92
90-6-503	8.111.402, 404	92
90-6-505	8.111.402, 404, 409	92
90-6-506	8.111.402, 404	92
90-6-507	8.111.402, 404, 409	92
L. 1997, Ch. 522	Opinion No. 12	1023
L. 1997, Ch. 375	Opinion No. 15	1526
L. 1995, Ch. 531	Opinion No. 12	1023
L. 1995, Ch. 407	Opinion No. 15	1526
L. 1989, Ch. 293	Opinion No. 15	1526
L. 1979, Ch. 19	26.4.1301	281
L. 1931, Ch. 102	Opinion No. 12	1023
Opinion 44-35	Opinion No. 11	1018
Opinion 42-60	Opinion No. 12	1023
Opinion 42-51	Opinion No. 13	1030

<u>MCA</u>	<u>Rule or A.G.'s Opinion</u>	<u>Register Page No.</u>
Opinion 42-36	Opinion No. 10	187
Opinion 42-16	Opinion No. 10	187
Opinion 41-91	Opinion No. 11	1018
Opinion 41-40	Opinion No. 10	187
Opinion 40-57	Opinion No. 10	187
Opinion 38-106	Opinion No. 10	187
Opinion 38-66	Opinion No. 10	187
Opinion 38-35	Opinion No. 11	1018
Opinion 35-55	Opinion No. 10	187
Mt. Const., Art. II, Sec. 8 & 9	Opinion No. 13	1030
ARM 1.3.226 - 229	Declaratory Ruling (DNRC)	194
ARM 24.16.9002	Opinion No. 12	1023
ARM 36.2.101	Declaratory Ruling (DNRC)	194
40 USC 270a - 270f	Opinion No. 12	1023
40 USC 276a - 270a-7	Opinion No. 12	1023
43 USC 753	Opinion No. 10	187
25 CFR 5.2(1) (1997)	Opinion No. 12	1023
US Const., Art. 1, Sec. 8, Clause 3	Opinion No. 12	1023
US Statutes at Large		
46 Stat. 1011	Opinion No. 12	1023
46 Stat. 1494	Opinion No. 12	1023